

25-29
No. 11919

United States
Circuit Court of Appeals
for the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner
vs.

O'KEEFE AND MERRITT MANUFACTURING
COMPANY, etc.,
Appellees.

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C.I.O., and
PHILIP MURRAY, Individually and as
President of the United Steelworkers of
America, C.I.O.,
Intervenors.

Transcript of Record
In Four Volumes
VOLUME I
Pages 1 to 456

Upon Petition for Enforcement With Modifications of an
Order of the National Labor Relations Board.

SEP 1 - 1948

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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BOARD'S EXHIBIT NO. 1-A

United States of America
Before The National Labor Relations Board
Twenty-First Region
Case No. 21-C-2689
Date Filed 2/6, 1946

In the matter of
O'KEEFE & MERRITT COMPANY, INC. and
PIONEER ELECTRIC CO.
and
UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, CIO.

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that O'Keefe & Merritt Company, Inc. and Pioneer Electric Co. at 3700 East Olympic Boulevard, Los Angeles 23, California employing 450 workers in stove and other steel fabricating business has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (5) of said Act, in that the United Steelworkers of America, Stove Division, Local 1981, CIO was on the 28th day of November, 1945 determined by the NLRB and so certified by it as the exclusive collective bargaining representative for the production and maintenance employees of the above named companies; that notwithstanding this determination and certification by the NLRB, the companies by their agents, representatives and employees have

failed and refused and continue to fail and refuse to recognize the said union as the said bargaining representative and have failed and refused and continue to fail and refuse to bargain with said union on behalf of the production and maintenance employees of said named companies.

By the acts set forth in the paragraph above and by other acts and statements of the said named companies, by and through their agents, representatives and employees, said companies have interfered with and violated the rights guaranteed to their employees under Section 7 of the Act, in violation of Section 8 (1) of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

U N I T E D S T E E L W O R K E R S
O F A M E R I C A , S T O V E D I -
V I S I O N , L O C A L 1 9 8 1 , C I O

By /s/ JOHN DESPOL,

International Representative.

Subscribed and sworn to before me this 6th day of February, 1946 at Los Angeles, California.

[Seal] /s/ KATHLEEN SIMS,
Notary Public in and for said County and State.

BOARD'S EXHIBIT NO. 1-B

United States Of America

Before The National Labor Relations Board

Twenty-First Region

Case No. 21-C-2689

In the matter of

O'KEEFE AND MERRITT COMPANY, INC.,
and L. G. MITCHELL, W. J. O'KEEFE,
MARION JENKS, LEWIS M. BOYLE,
ROBERT J. MERRITT, ROBERT J. MER-
RITT, JR., and WILLIAM J. DURANT d/b/a
PIONEER ELECTRIC COMPANY,

and

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, CIO., and
STOVE MOUNTERS INTERNATIONAL
UNION OF AMERICA, affiliated with the
AMERICAN FEDERATION OF LABOR,
party to the contract; and LOS ANGELES
METAL TRADES COUNCIL, A. F. of L.,
party to the contract.

COMPLAINT

It having been charged in the above-entitled matter by United Steelworkers of America, Stove Division, Local 1981, C.I.O., hereinafter referred to as the "Union" that O'Keefe and Merritt Company, Inc., and L. G. Mitchell, whose Christian name is unknown; W. J. O'Keefe, whose Christian name is unknown; Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr. and William J. Du-

rant, partners doing business under the fictitious firm name and style of Pioneer Electric Company, hereinafter referred to as "Respondents," have engaged in, and are engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter called the "Act," the Regional Director for the Twenty-first Region of the National Labor Relations Board, hereinafter called the "Board," designated as agent of the Board by Article IV, Section 1, subsection (c), Article II, Section 5 of its Rules and Regulations—Series 3, as amended, hereby issues its complaint and alleges the following:

1. Respondents are engaged in the business of manufacturing stoves and related products, having a place of business in the City of Los Angeles, California.
2. Respondents, in the operation of their business, caused, and continuously have caused large quantities of the principal raw materials used by them in their aforesaid business to be transported into the State of California from other States of the United States.
3. Respondents, in the operation of their aforesaid business, caused, and continuously have caused, large quantities of their finished products to be sold, distributed, and transported out of the State of California to States of the United States other than the State of California.
4. United Steelworkers of America, Stove Division, Local 1981, C. I. O., Los Angeles Metal Trades

Council, A. F. of L., and Stove Mounters International Union of North America, A. F. of L., are labor organizations within the meaning of section 2, subsection (5) of the Act.

5. Since on or about October 1, 1945, and at all times thereafter up to and including the date of this complaint, Respondents, while engaged in the aforesaid business, acting through their agents and servants, specifically, but without limitation, Cecil W. Collins, Fred Rotter, Joe Spallino, Daniel P. O'Keefe, and William J. Durant, have interfered with, restrained, and coerced, and are now interfering with, restraining, and coercing their employees in the exercise of their rights to engage in concerted activities for the purpose of collective bargaining with Respondents, and for other mutual aid or protection, by the following acts and conduct, pleading without limitation:

- a. Inducing, and attempting to induce, the employees to transfer their union affiliation from the Union to Stove Mounters International Union of America, affiliated with the American Federation of Labor.
- b. By the purported transfer of the operation of the business from Respondents, O'Keefe and Merritt Company, Inc., to Respondent, Pioneer Electric Company.
- c. Aiding and assisting the Stove Mounters International Union of North America and the Los Angeles Metal Trades Council, A. F. of L., by instigating and conducting solicitation for membership into the Stove Mounters Interna-

tional Union of North America, affiliated with the American Federation of Labor and the Los Angeles Metal Trades Council, A. F. of L.,

- d. By entering into a contract or agreement with the Stove Mounters International Union of North America, affiliated with the A. F. of L., at a time when the Stove Mounters International Union of North America, affiliated with the A. F. of L., was not the duly designated exclusive bargaining agent for the employees within the meaning of the National Labor Relations Act.
- e. By entering into a contract or agreement with the Los Angeles Metal Trades Council, A. F. of L., at a time when the Los Angeles Metal Trades Council, A. F. of L., was not the duly designated exclusive bargaining agent for the employees within the meaning of the National Labor Relations Act.
- f. By attempting by means of offers of payment of money and other inducements to influence and persuade John A. Despol and G. J. Conway, representatives of the United Steelworkers of America, Stove Division, Local 1981, C. I. O., to withdraw this organization from its exclusive bargaining position on behalf of the employees and to discontinue further activity on behalf of the United Steelworkers of America, Stove Division, Local 1981, C. I. O.
- g. By threatening employees with discharge or other disciplinary action if they joined or refused to withdraw membership or designation

from United Steelworkers of America, Stove Division, Local 1981, C. I. O.

h. By questioning employees concerning their membership or desires for membership or designation in United Steelworkers of America, Stove Division, Local 1981, C. I. O.

6. By the commission of the acts, and each of them, set forth in paragraph 5, Respondents have engaged in, and are engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

7. A unit composed of all production and maintenance employees of Respondents, excluding office clerical employees; guards, parcel post clerks; draftsmen; timekeepers; material expediters; pattern makers and pattern makers helpers other than those working in sheet metal; experimental laboratory workers; and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively to recommend such action, would insure to Respondents' employees full benefit of the right to self-organization and otherwise would effectuate the policies of the Act, and is therefore a unit appropriate for the purposes of collective bargaining.

8. On or about November 20, 1945, and all times thereafter, a majority of employees in the unit set forth in paragraph 7, above, did designate the union as its representative for the purpose of bargaining collectively with Respondents and by virtue of said designation was, and has been, at all times since

November 20, 1945, and is now the exclusive representative of all employees in the said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.

9. Respondents, during the course and conduct of their business, did on or about November 20, 1944, refused and failed, and at all times thereafter, refused and failed, and do now refuse and fail to bargain collectively in good faith with respect to rates of pay, wages, hours, and other conditions of employment with the union as exclusive representative of all employees in the aforesaid unit. Respondents have refused and failed, and continued in their refusal and failure to meet, bargain, and negotiate, in good faith with the union for purposes of collective bargaining. Respondents by their acts, and each of them, as set forth herein, did engage in and are now engaging in unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

10. Respondents by the commission of the acts set forth in paragraph 10 hereof did interfere with, restrain, and coerce their employees, and are interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed to said employees by Section 7 of the Act, and did thereby engage in, and are thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

11. The said purported contract entered into by Respondents with the Stove Mounters International Union of North America, affiliated with the Ameri-

can Federation of Labor, at a time when Stove Mounters International Union of North America, affiliated with the American Federation of Labor, was not the duly designated exclusive bargaining agent of said employees, and at a time when the Stove Mounters International Union of North America had been improperly and illegally assisted as heretofore set forth in paragraph 5, above, is an illegal and void contract, or agreement, and should be declared illegal, invalid, and void.

12. The said purported contract entered into by Respondents with Los Angeles Metal Trades Council, A. F. of L., at a time when Los Angeles Metal Trades Council, A. F. of L., was not the duly designated exclusive bargaining agent of said employees, and at a time when the Los Angeles Metal Trades Council, A. F. of L., had been improperly and illegally assisted as heretofore set forth in paragraph 5, above, is an illegal and void contract, or agreement, and should be declared illegal, invalid, and void.

13. The aforesaid acts of Respondents, as set forth in paragraphs 5, 6, 9, 10, 11, and 12, hereof, constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (5), and Section 2, subsections (6) and (7) of the Act.

14. The aforesaid acts of Respondents, as set forth in paragraphs 5, 6, 9, 10, 11, and 12, occurred in connection with the operation of Respondents' described in paragraphs 1, 2, and 3, hereof, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and

tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Wherefore the National Labor Relations Board, on the 14th day of February, 1946, issues its Complaint against Respondents herein.

[Seal] /s/ STEWART MEACHAM,
Director Twenty-first Region, National Labor Re-
lations Board, 111 West Seventh Street, Los
Angeles 14, California.

[Endorsed]: Filed March 13, 1946. [9]

BOARD'S EXHIBIT No. 1-C

[Title of Board and Cause.]

NOTICE OF HEARING

Please Take Notice that on the 27th day of February, 1946, at 10:00 a.m. in Room 704, 111 West Seventh Street Building, Los Angeles, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the Regional Director for the Twenty-first Region, with offices at Room 704, 111 West Seventh Street Building, Los Angeles 14, California, acting in this matter as agent of the National

Labor Relations Board, an answer to the said Complaint, within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Twenty-first Region on this 14th day of February, 1946.

[Seal] /s/ STEWART MEACHAM,
 Regional Director, National
 Labor Relations Board.

[Affidavit of service by mail and return receipts (Board's Exhibits 1-D and 1-E) attached.]

[Endorsed]: Filed March 13, 1946.

BOARD'S EXHIBIT No. 1-F

United States of America
Before the National Labor Relations Board
Twenty-First Region
Case No. 21-C-2689

In the Matter of
O'KEEFE AND MERRITT MANUFACTURING COMPANY and L. G. MITCHELL,
W. J. O'KEEFE, MARION JENKS, LEWIS
M. BOYLE, ROBERT J. MERRITT, ROBERT J. MERRITT, JR., and WILLIAM J.
DURANT, individually and as co-partners,
d/b/a **PIONEER ELECTRIC COMPANY**
and
UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C.I.O.,
and **STOVE MOUNTERS INTERNATIONAL UNION OF NORTH AMERICA,**
affiliated with the **AMERICAN FEDERATION OF LABOR**, party to the contract; and
LOS ANGELES METAL TRADES COUNCIL, A.F. of L., party to the contract.

AMENDED COMPLAINT

It having been charged in the above-entitled matter by United Steelworkers of America, Stove Division, Local 1981, C.I.O., hereinafter referred to as the "Union," that O'Keefe and Merritt Manufacturing Company, and L. G. Mitchell, whose Christian name is unknown; W. J. O'Keefe, whose Christian name is unknown; Marion Jenks, Lewis

M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and William J. Durant, partners doing business under the fictitious firm name and style of Pioneer Electric Company, hereinafter referred to as "Respondents," have engaged in, and are engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter called the "Act," the Regional Director for the Twenty-first Region of the National Labor Relations Board, hereinafter called the "Board," designated as agent of the Board by Article IV, Section 1, subsection (c), and Article II, Section 5 of its Rules and Regulations, Series 3, as amended, hereby issues its Amended Complaint and alleges the following:

1. Respondent, O'Keefe and Merritt Manufacturing Company, is a corporation organized under and existing by virtue of the laws of the State of California, having a principal office and place of business in the City of Los Angeles, County of Los Angeles, State of California, hereinafter called the plant, where at all times mentioned herein it was engaged in the manufacture, sale and distribution of gas stoves and other gas appliances.

2. Respondents L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and William J. Durant are partners doing business under the fictitious firm name and style of Pioneer Electric Company, having their principal office and place of business in the City of Los Angeles, County of Los Angeles, State of California, hereinafter called the plant, and where at all times mentioned herein they were en-

gaged in the manufacture, sale and distribution of gas stoves and other gas appliances.

3. Respondents, in the course and conduct of their businesses as set forth above, caused and have continuously caused large quantities of materials to be purchased, obtained, shipped and transported in interstate commerce from and through states of the United States other than the State of California to their plant in the State of California, and cause and have continuously caused large quantities of products manufactured at the plant to be sold and transported in interstate commerce to, into and through states of the United States other than the State of California.

4. United Steelworkers of America, Stove Division, Local 1981, C. I. O., Los Angeles Metal Trades Council, affiliated with American Federation of Labor, and Stove Mounters International Union of North America, affiliated with American Federation of Labor, are labor organizations within the meaning of Section 2, subsection (5) of the Act.

5. Respondents, since on or about October 1, 1945, and at all times thereafter up to and including the date of this Amended Complaint, while engaged in the businesses set forth and described in paragraphs 1, 2, and 3, above, acting through their officers, agents, employees, and servants, specifically but without limitation, Cecil W. Collins, Fred Rotter, Joe Spallino, Daniel P. O'Keefe and William J. Durant, have interfered with, restrained and coerced, and are now interfering with, restraining and coercing their employees in the exercise of

the rights of said employees to self organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection by the following acts and conduct, pleading without limitation:

- a. Inducing and attempting to induce said employees to transfer their union affiliation from the Union to Stove Mounters International Union of North America, affiliated with the American Federation of Labor.
- b. Transferring or pretending to transfer the operation of the business from Respondent O'Keefe and Merritt Manufacturing Company to Respondents L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and William J. Durant, individually, and as co-partners doing business under the fictitious firm name and style of Pioneer Electric Company.
- c. Contributing to and encouraging membership in Stove Mounters International Union of North America, and in Los Angeles Metal Trades Council, affiliated with American Federation of Labor, by instigating and soliciting membership in Stove Mounters International Union of North America, affiliated with American Federation of Labor, and in Los Angeles Metal Trades Council, affiliated with the American Federation of Labor.

- d. Entering into a contract with Stove Mounters International Union of North America, affiliated with American Federation of Labor, at a time when Stove Mounters International Union of North America, affiliated with American Federation of Labor was not the duly designated exclusive bargaining agent for said employees within the meaning of the National Labor Relations Act.
- e. Entering into an exclusive collective bargaining contract dated February 2, 1946, with Los Angeles Metal Trades Council, affiliated with American Federation of Labor, at a time when Los Angeles Metal Trades Council, affiliated with American Federation of Labor, was not the duly designated exclusive bargaining agent for said employees within the meaning of the National Labor Relations Act.
- f. Attempting by offers of payment of money and other inducements to influence and persuade John A. Despol and G. J. Conway, representatives of the Union, to surrender the Union's position as duly designated exclusive bargaining representative of the employees, and to discontinue further activity on behalf of the Union.
- g. Threatening their employees with discharge or other disciplinary action if they joined the Union, refused to withdraw membership from the Union, assisted the Union, or designated the Union as their bargaining agent.
- h. Questioning employees concerning their mem-

bership or desires for membership in or designation of the Union.

6. Respondents, by the commission of the acts and each of them set forth in paragraph 5, did interfere with, restrain and coerce, and are interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage and are thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

7. A unit composed of all production and maintenance employees of Respondent O'Keefe and Merritt Manufacturing Company, excluding office clerical employees; guards, parcel post clerks; draftsmen; timekeepers; material expeditors; pattern makers and pattern makers helpers other than those working in sheet metal; experimental laboratory workers; and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively to recommend such action, would insure to Respondent O'Keefe and Merritt Manufacturing Company's employees full benefit of the right to self-organization and otherwise would effectuate the policies of the Act, and is therefore a unit appropriate for the purposes of collective bargaining.

8. On or about November 20, 1945, and all times thereafter, a majority of Respondent O'Keefe and Merritt Manufacturing Company's employees in the

unit set forth in paragraph 7, above, did designate the Union as its representative for the purpose of bargaining collectively with Respondents and by virtue of said designation the Union was, and has been, at all times since November 20, 1945, and is now the exclusive representative of all employees in the said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.

9. Respondents, during the course and conduct of their businesses, as set forth and described in paragraphs 1, 2, and 3, above, did on or about November 20, 1945, refuse and fail, and at all times thereafter, refused and failed, and do now refuse and fail to meet, negotiate and bargain collectively in good faith with respect to rates of pay, wages, hours, and other conditions of employment with the Union as exclusive representative of all employees in the unit set forth in paragraph 7, above. Respondents by their acts, and each of them, as set forth herein, did engage in and are now engaging in unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

10. Respondents, by the acts set forth in paragraph 9 hereof, did interfere with, restrain, and coerce their employees, and are interfering with, restraining, and coercing employees in the exercise of the rights guaranteed to said employees by Section 7 of the Act, and did thereby engage in, and are thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

11. The said exclusive collective bargaining con-

tract dated February 2, 1946, entered into by Respondents with Stove Mounters International Union of North America, affiliated with American Federation of Labor, at a time when Stove Mounters International Union of North America, affiliated with American Federation of Labor, was not the duly designated exclusive bargaining agent of their employees, and at a time when Stove Mounters International Union of North America, affiliated with American Federation of Labor, had been improperly and illegally assisted as heretofore set forth in paragraph 5, above, is an illegal, invalid and void contract, and should be so declared.

12. The said exclusive collective bargaining contract entered into by Respondents with Los Angeles Metal Trades Council, affiliated with American Federation of Labor, at a time when Los Angeles Metal Trades Council, affiliated with American Federation of Labor, was not the duly designated exclusive bargaining agent of said employees, and at a time when the Los Angeles Metal Trades Council, affiliated with American Federation of Labor, had been improperly and illegally assisted as heretofore set forth in paragraph 5, above, is an illegal, invalid and void contract, or agreement, and should be so declared.

13. The aforesaid acts of Respondents, set forth and described in paragraphs 5, 6, 9, 10, 11, and 12, hereof, occurring in connection with the operations of Respondents set forth and described in paragraphs 1, 2, and 3, hereof, have a close, intimate and substantial relation to commerce as defined in

Section 2 (6) of the Act, and have led and tend to lead to labor disputes burdening or obstructing commerce and the free flow of commerce.

14. The aforesaid acts and conduct of Respondents, set forth and described in paragraphs 5, 6, 9, 10, 11, 12, and 13 hereof, occurring in connection with the operations of Respondents set forth and described in paragraphs 1, 2, and 3, hereof, constitute unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5), and Sections 2, 6, and 7 of the Act.

Wherefore the National Labor Relations Board, on the 18th day of February, 1946, issues its Amended Complaint against Respondents herein.

[Seal] /s/ STEWART MEACHAM,
Director, Twenty-first Region National Labor Re-
lations Board, 111 West Seventh Street, Los
Angeles 14, California.

[Affidavit of service by mail and return receipts
(Board's Exhibits 1-G and 1-H) attached.]

[Endorsed]: Filed March 13, 1946.

BOARD'S EXHIBIT No. 1-I

United States of America

Before the National Labor Relations Board

Twenty-First Region

Case No. 21-C-2689

Date Filed 2/21/1946

In the Matter of

O'KEEFE AND MERRITT MANUFACTURING COMPANY and L. G. MITCHELL, W. J. O'KEEFE, MARION JENKS, LEWIS M. BOYLE, ROBERT J. MERRITT, ROBERT J. MERRITT, JR., and WILLIAM J. DURANT, individually and as co-partners, d/b/a PIONEER ELECTRIC COMPANY
and

UNITED STEELWORKERS OF AMERICA, STOVE DIVISION, LOCAL 1981, C. I. O., and STOVE MOUNTERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 125, affiliated with the AMERICAN FEDERATION OF LABOR; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 389, affiliated with AMERICAN FEDERATION OF LABOR; INTERNATIONAL MOULDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA, LOCAL 376, affiliated with AMERICAN FEDERATION OF LABOR; DISTRICT LODGE 96,

for and on behalf of its affiliate LOCAL 311 of the INTERNATIONAL ASSOCIATION OF MACHINISTS; BROTHERHOOD OF PAINTERS, DECORATORS AND PAPER-HANGERS OF AMERICA, LOCAL 792, affiliated with AMERICAN FEDERATION OF LABOR; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, affiliated with AMERICAN FEDERATION OF LABOR; AND REFRIGERATOR FITTERS UNITED ASSOCIATION, LOCAL 508, affiliated with AMERICAN FEDERATION OF LABOR, parties to the contract.

FIRST AMENDED CHARGE

Pursuit to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that O'Keefe and Merritt Manufacturing Company, et al, 3700 East Olympic Boulevard, Los Angeles 23, California, employing 450 workers in stove and other steel fabricating business, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsection (1) and (5) of said Act in that .

The United Steelworkers of America, Stove Division, Local 1981, C. I. O., was on the 28th day of November, 1945, determined by the NLRB and so certified by it as the exclusive collective bargaining representative for the production and maintenance employees of the above named companies; that notwithstanding this determination and cer-

tification by the NLRB, the companies by their agents, representatives and employees have failed and refused and continue to fail and refuse to recognize the said union as the said bargaining representative and have failed and refused and continue to fail and refuse to bargain with said union on behalf of the production and maintenance employees of said named companies.

By the acts set forth in the paragraph above and by other acts and statements of the said named companies, by and through their agents, representatives and employees, said companies have interfered with and violated the rights guaranteed to their employees under Section 7 of the Act, in violation of Section 8 (1) of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

UNITED STEELWORKS OF
AMERICA, STOVE DIVI-
SION, LOCAL 1981, C. I. O.

By /s/ MILTON S. TYRE,
Its Attorney.

Subscribed and sworn to before me this 21 day
of February, 1946, at Los Angeles, California.

/s/ EUGENE M. PURVER,
Atty. 21st. Reg. NLRB.

BOARD'S EXHIBIT NO 1-J

United States Of America
Before The National Labor Relations Board
Twenty-First Region
Case No. 21-C-2689

In the Matter of
O'KEEFE AND MERRITT MANUFACTURING COMPANY and L. G. MITCHELL, W. J. O'KEEFE, MARION JENKS, LEWIS M. BOYLE, ROBERT J. MERRITT, ROBERT J. MERRITT, JR., and WILLIAM J. DURANT, individually and as co-partners, d/b/a **PIONEER ELECTRIC COMPANY**
and

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C. I. O.,
and **STOVE MOUNTERS INTERNATIONAL UNION OF NORTH AMERICA,**
LOCAL 125, affiliated with the AMERICAN FEDERATION OF LABOR; **INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,**
LOCAL 389, affiliated with AMERICAN FEDERATION OF LABOR; **INTERNATIONAL**

MOULDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA, LOCAL 376, affiliated with AMERICAN FEDERATION OF LABOR; DISTRICT LODGE 96, for and on behalf of its affiliate LOCAL 311 of the INTERNATIONAL ASSOCIATION OF MACHINISTS; BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 792, affiliated with AMERICAN FEDERATION OF LABOR; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, affiliated with AMERICAN FEDERATION OF LABOR; and REFRIGERATOR FITTERS UNITED ASSOCIATION, LOCAL 508, affiliated with AMERICAN FEDERATION OF LABOR, parties to the contract.

SECOND AMENDED COMPLAINT

It having been charged in the above-entitled matter by United Steelworkers of America, Stove Division, Local 1981, C. I. O., hereinafter referred to as the "Union," that O'Keefe and Merritt Manufacturing Company, and L. G. Mitchell, whose Christian name is unknown; W. J. O'Keefe, whose Christian name is unknown; Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and William J. Durant, partners doing business under the fictitious firm name and style of Pioneer Electric Company, hereinafter referred to as "Respondents," have engaged in, and are engaging in, certain unfair labor practices affecting commerce

as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter called the "Act," the Regional Director for the Twenty-first Region of the National Labor Relations Board, hereinafter called the "Board," designated as agent of the Board by Article IV, Section 1, subsection (c), and Article II, Section 5 of its Rules and Regulations—Series 3, as amended, hereby issues its Amended Complaint and alleges the following:

1. Respondents, O'Keefe and Merritt Manufacturing Company, is a corporation organized under and existing by virtue of the laws of the State of California, having a principal office and place of business in the City of Los Angeles, County of Los Angeles, State of California, hereinafter called the plant, where at all times mentioned herein it was engaged in the manufacture, sale and distribution of gas stoves and other gas appliances.

2. Respondents L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and William J. Durant are partners doing business under the fictitious firm name and style of Pioneer Electric Company, having their principal office and place of business in the City of Los Angeles, County of Los Angeles, State of California, hereinafter called the plant, and where at all times mentioned herein they were engaged in the manufacture, sale and distribution of gas stoves and other gas appliances.

3. Respondents, in the course and conduct of their businesses as set forth above, caused and have continuously caused large quantities of materials to

be purchased, obtained, shipped and transported in interstate commerce from and through states of the United States other than the State of California to their plant in the State of California, and cause and have continuously caused large quantities of products manufactured at the plant to be sold and transported in interstate commerce to, into and through states of the United States other than the State of California.

4. United Steelworkers of America, Stove Division, Local 1981, C.I.O., and Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, affiliated with American Federation of Labor; International Moulders and Foundry Workers Union of North America, Local 376, affiliated with American Federation of Labor; District Lodge 96, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, affiliated with American Federation of Labor; United Brotherhood of Carpenters and Joiners of America, affiliated with American Federation of Labor; and Refrigerator Fitters United Association, Local 508, affiliated with American Federation of Labor, are labor organizations within the meaning of Section 2, subsection (5) of the Act.

5. Respondents, since on or about October 1, 1945, and at all times thereafter up to and includ-

ing the date of this Second Amended Complaint, while engaged in the businesses set forth and described in paragraphs 1, 2, and 3, above, acting through their officers, agents, employees, and servants, specifically but without limitation, Cecil W. Collins, Fred Rotter, Joe Spallino, Daniel P. O'Keefe and William J. Durant, have interfered with, restrained and coerced, and are now interfering with, restraining and coercing their employees in the exercise of the rights of said employees to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection by the following acts and conduct, pleading without limitation:

- a. Inducing and attempting to induce said employees to transfer their union affiliation from the Union to Stove Mounters International Union of North America, Local 125, affiliated with American Federation of Labor; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, affiliated with American Federation of Labor; International Moulders and Foundry Workers Union of North America, Local 376, affiliated with American Federation of Labor; District Lodge 96, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America,

Local 792, affiliated with American Federation of Labor; United Brotherhood of Carpenters and Joiners of America, affiliated with American Federation of Labor; and Refrigerator Fitters United Association, Local 508, affiliated with American Federation of Labor.

- b. Transferring or pretending to transfer the operation of the business from Respondent O'Keefe and Merritt Manufacturing Company to Respondents L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and William J. Durant, individually, and as co-partners doing business under the fictitious firm name and style of Pioneer Electric Company.
- c. Contributing to and encouraging membership in Stove Mounters International Union of North America, Local 125, affiliated with American Federation of Labor; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, affiliated with American Federation of Labor; International Moulders and Foundry Workers Union of North America, Local 376, affiliated with American Federation of Labor; District Lodge 96, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, affiliated with American Federation of Labor; United Brotherhood of Carpenters and Joiners of America, affiliated with American Federa-

tion of Labor; and Refrigerator Fitters United Association, Local 508, affiliated with American Federation of Labor, by instigating and soliciting membership in said labor organizations.

d. Entering into a contract with Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, affiliated with American Federation of Labor; International Moulders and Foundry Workers Union of North America, Local 376, affiliated with American Federation of Labor; District Lodge 96, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, affiliated with American Federation of Labor; United Brotherhood of Carpenters and Joiners of America, affiliated with American Federation of Labor; and Refrigerator Fitters United Association, Local 508, affiliated with American Federation of Labor, at a time when none of said labor organizations was the duly designated exclusive bargaining agent for said employees within the meaning of the National Labor Relations Act.

e. Attempting by offers of payment of money and other inducements to influence and persuade

John A. Despol and G. J. Conway, representatives of the Union, to surrender the Union's position as duly designated exclusive bargaining representative of the employees, and to discontinue further activity on behalf of the Union.

- f. Threatening their employees with discharge or other disciplinary action if they joined the Union, refused to withdraw membership from the Union, assisted the Union, or designated the Union as their bargaining agent.
- g. Questioning employees concerning their membership or desires for membership in or designation of the Union.

6. Respondents, by the commission of the acts and each of them set forth in paragraph 5, above, did interfere with, restrain and coerce, and are interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage and are thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

7. A Unit composed of all production and maintenance employees of Respondent O'Keefe and Merritt Manufacturing Company, excluding office clerical employees; guards; parcel post clerks; draftsmen; timekeepers; material expeditors; pattern makers and pattern makers helpers other than those working in sheet metal; experimental laboratory workers; and supervisory employees with authority to hire, promote, discharge, discipline, or

otherwise effect changes in the status of employees, or effectively to recommend such action, would insure to Respondent O'Keefe and Merritt Manufacturing Company's employees full benefit of the right self-organization and otherwise would effectuate the policies of the Act, and is therefore a unit appropriate for the purposes of collective bargaining.

8. On or about November 20, 1945, and all times thereafter, a majority of Respondent O'Keefe and Merritt Manufacturing Company's employees in the unit set forth in paragraph 7, above, did designate the Union as its representative for the purpose of bargaining collectively with Respondents and by virtue of said designation the Union was, and has been at all times since November 20, 1945, and is now the exclusive representative of all employees in the said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.

9. Respondents, during the course and conduct of their businesses, as set forth and described in paragraphs 1, 2, and 3, above, did on or about November 20, 1945, refuse and fail, and at all times thereafter, refused and failed, and do now refuse and fail to meet, negotiate and bargain collectively in good faith with respect to rates of pay, wages, hours, other conditions of employment with the Union as exclusive representative of all employees in the unit set forth in paragraph 7, above. Respondents by their acts, and each of them, as set forth herein, did engage in and are now engaging in

unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

10. Respondents, by the acts set forth in paragraph 9, above, did interfere with, restrain, and coerce their employees, and are interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed to said employees by Section 7 of the Act, and did thereby engage in, and are thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

11. The said exclusive collective bargaining contract dated February 2, 1946, entered into by Respondents with Stove Mounters International Union of North America, Local 125, affiliated with American Federation of Labor; International Brotherhood of Teamster, Chauffeurs, Warehousemen and Helpers of America, Local 389, affiliated with American Federation of Labor; International Moulders and Foundry Workers Union of North America, Local 376, affiliated with American Federation of Labor; District Lodge 96, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, affiliated with American Federation of Labor; United Brotherhood of Carpenters and Joiners of America, affiliated with American Federation of Labor; and Refrigerator Fitters United Association, Local 508, affiliated with American Federation of Labor, at a time when none of said unions was

the duly designated exclusive bargaining agent of their employees, and at a time when said labor organizations had been improperly and illegally assisted as heretofore set forth in paragraph 5, above, is an illegal, invalid and void contract, and should be so declared.

12. The aforesaid acts of Respondents, set forth and described in paragraphs 5, 6, 9, 10, and 11, above, occurring in connection with the operations of Respondents, set forth and described in paragraphs 1, 2, and 3, above, have a close, intimate and substantial relation to commerce as defined in Section 2 (6) of the Act, and have led and tend to lead to labor disputes burdening or obstructing commerce and the free flow of commerce.

13. The aforesaid acts and conduct of Respondents, set forth and described in paragraphs 5, 6, 9, 10, 11, and 12, above, occurring in connection with the operations of Respondents, set forth and described in paragraphs 1, 2, and 3, above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5), and Sections 2, 6, and 7 of the Act.

Wherefore the National Labor Relations Board, on the 20th day of February, 1946, issues its Second Amended Complaint against Respondents herein.

[Seal] /s/ STEWART MEACHAM,
Director, Twenty-first Region, National Labor Re-
lations Board, 111 West Seventh Street, Los
Angeles 14, California.

[Endorsed]: Filed March 13, 1946.

BOARD'S EXHIBIT No. 1-K

[Title of Board and Cause.]

NOTICE OF HEARING

Please Take Notice that on the 6th day of March, 1946, at 10:00 a.m. in Room 704, 111 West Seventh Street Building, Los Angeles, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Second Amended Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Amended Charge upon which the Second Amended Complaint is based is attached hereto.

You are further notified that you have the right to file with the Regional Director for the Twenty-first Region, with offices at Room 704, 111 West Seventh Street Building, Los Angeles 14, California, acting in this matter as agent of the National Labor Relations Board, an answer to the said Second Amended Complaint, within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Second Amended

Complaint and Notice of Hearing, to be signed by the Regional Director for the Twenty-first Region on this 20th day of February, 1946.

[Seal] /s/ STEWART MEACHAM,
 Regional Director, National
 Labor Relations Board.

[Affidavit of service by mail and return receipts (Board's Exhibits 1-L and 1-M) attached.]

[Endorsed]: Filed March 13, 1946.

BOARD'S EXHIBIT No. 1-N
[Title of Board and Cause.]

ORDER POSTPONING HEARING

It Is Hereby Ordered that the hearing in the above-entitled matter be, and hereby is, postponed to March 6, 1946, at 10:00 a.m., at the same place as appears in the Notice of Hearing heretofore issued.

Dated at Los Angeles, California, this 20th day of February, 1946.

[Seal] /s/ STEWART MEACHAM,
Director, Twenty-first Region, National Labor Relations Board, 111 West Seventh Street, Los Angeles 14, California.

[Affidavit of service by mail and return receipts (Board's Exhibits 1-O and 1-P) attached.]

[Endorsed]: Filed March 13, 1946.

BOARD'S EXHIBIT No. 1-Q

United States of America

Before the National Labor Relations Board

Twenty-First Region

Case No. 21-C-2689

In the Matter of

O'KEEFE AND MERRITT MANUFACTURING COMPANY and L. G. MITCHELL, W. J. O'KEEFE, MARION JENKS, LEWIS M. BOYLE, ROBERT J. MERRITT, ROBERT J. MERRITT, JR., and WILLIAM J. DURANT, individually and as Co-partners, d/b/a PIONEER ELECTRIC COMPANY

and

UNITED STEELWORKERS OF AMERICA, STOVE DIVISION, LOCAL 1981, CIO., and STOVE MOUNTERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 125, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 389, affiliated with AMERICAN FEDERATION OF LABOR; INTERNATIONAL MOULDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA, LOCAL 376, Affiliated with AMERICAN FEDERATION OF LABOR; DISTRICT LODGE 96, for and

on behalf of its affiliate LOCAL 311 of the INTERNATIONAL ASSOCIATION OF MACHINISTS; BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 792, affiliated with AMERICAN FEDERATION OF LABOR; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, affiliated with AMERICAN FEDERATION OF LABOR; AND REFRIGERATOR FITTERS UNITED ASSOCIATION, LOCAL 508, affiliated with AMERICAN FEDERATION OF LABOR, parties to the contract.

ANSWER OF RESPONDENTS

Comes now the respondents in the above-entitled matter and, for answer to the complaint, first amended complaint and second amended complaint on file herein, admit, deny and allege as follows:

I.

Answering Paragraph 5 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein, except that respondents admit that the O'Keefe & Merritt Co. did lease a certain part of their manufacturing facilities to the Pioneer Electric Company and that, thereafter, the Pioneer Electric Company did sign a labor contract with certain A. F. of L. Locals, and, in this connection, allege that O'Keefe & Merritt Co. has, on prior occasions leased certain portions of its factory to

the Pioneer Electric Co., and that the Pioneer Electric Company, prior to signing a contract with the various A. F. of L. Locals, referred to in the complaint herein on file, did ascertain from said Locals that they did represent a majority of the employees employed by the Pioneer Electric Company.

II.

Answering Paragraph 6 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein.

III.

Answering Paragraph 7 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein.

IV.

Answering Paragraph 8 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein; and, in this connection, allege that, at the time referred to therein, respondent, O'Keefe & Merritt Co., was, and, at this time is, in the process of reconverting from wartime work to its peacetime manufacture of gas ranges and other gas appliances and that a mere skeleton crew of employees was employed, many of whom were construction laborers and other employees of a temporary nature who are not now employed by the company; that since that time approximately ninety former employees of this company who were ex-servicemen

have returned to work and who were not employed at that time.

V.

Answering Paragraph 9 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein.

VI.

Answering Paragraph 10 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein.

VII.

Answering Paragraph 11 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein; and, in this connection, allege that the respondent, Pioneer Electric Company, was given satisfactory proof by the various A. F. of L. Locals affected, that the A. F. of L. did represent a majority of its employees.

VIII.

Answering Paragraph 12 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein.

IX.

Answering Paragraph 13 of the complaint on file herein, respondents deny, generally and specifically, each and every allegation, matter and thing set forth therein.

As a Further Separate and Distinct Defense, Respondents Allege:

I.

That the O'Keefe & Merritt Co. has, over a period of years, leased a portion of its factory to the Pioneer Electric Co.; that the Pioneer Electric Co. was and is a separate legal entity, employing at one time as many as 180 employees; that new partners have been admitted to Pioneer Electric Co. and old ones dropped out from time to time; that the said Pioneer Electric Co., or any continuation thereof, has been continuously in business since November of 1942, maintaining separate records, separate payrolls, separate employee and employer contributions, separate income tax returns, separate Workmen's Compensation and, in all matters, was, and is, a separate legal entity entirely separate and apart from the O'Keefe & Merritt Co.

II.

That the complainant had made numerous false promises to the employees of respondent, O'Keefe & Merritt Co., which promises it was impossible to perform. That the said employees had opportunity to see what other workers, operating under complainant's contracts, were receiving in pay and working conditions and that, in this manner, became dissatisfied with complainant and selected the various A. F. of L. Locals to represent them. That upon the transfer of the manufacturing facilities of the O'Keefe & Merritt Co. to the Pioneer Electric Company, which transfer the complainant

stated was for the purpose of securing O.P.A. concessions and other tax reductions, and not for the purpose of evading any obligation of respondents to bargain with complainant,—that, thereafter, the respondent, Pioneer Electric Company, being under no legal obligation to bargain with anyone and, after having satisfactory proof presented to it, to wit: that A. F. of L.'s various Locals represented the vast majority of its employees and all other stove factories in California of any importance, did, in good faith, sign a contract with the said A. F. of L. Locals, which contract calls for the same rate of pay being paid by every other stove concern in California of any importance and is, in every particular, fair to its employees. That, as a result of said contract and other benefits given, its employees are receiving approximately 20% more than any of the employees of the said stove factories in this area.

Wherefore, respondents pray that complainants take nothing by their complaint on file herein and that said complaint be dismissed.

/s/ CECIL W. COLLINS,
Attorney for Respondents.

[Endorsed]: Filed March 13, 1946.

BOARD'S EXHIBIT No. 1-R

United States of America Before the National
Labor Relations Board, Twenty-first Region

Case No. 21-C-2689

O'KEEFE AND MERRITT MANUFACTURING
COMPANY and L. G. MITCHELL, W. J.
O'KEEFE, MARION JENKS, LEWIS M.
BOYLE, ROBERT J. MERRITT, ROBERT
J. MERRITT, JR., and WILLIAM J. DU-
RANT, Individually and as Co-partners, d/b/a
PIONEER ELECTRIC COMPANY,

and

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C. I. O.,
et al.

ANSWER OF LOS ANGELES COUNTY DIS-
TRICT COUNCIL OF CARPENTERS,
UNITED BROTHERHOOD OF CARPEN-
TERS AND JOINERS OF AMERICA, AF-
FILIATED WITH AMERICAN FEDERA-
TION OF LABOR, NAMED IN THE SEC-
OND AMENDED COMPLAINT AS
UNITED BROTHERHOOD OF CARPEN-
TERS AND JOINERS OF AMERICA, Af-
filiated With AMERICAN FEDERATION
OF LABOR, TO SECOND AMENDED COM-
PLAINT

Comes now Los Angeles County District Council
of Carpenters, United Brotherhood of Carpenters
and Joiners of America, affiliated with American

Federation of Labor, hereinafter referred to as "District Council," and answer the Second Amended Complaint herein as follows:

I.

The District Council alleges that it has no knowledge as to the truth or falsity of the facts alleged in Paragraph 5 of said Second Amended Complaint, or in Subdivisions (a), (b), (e), (f), or (g) of said Paragraph 5, or in Paragraphs 6, 9, 10, 11, or 13, of said Second Amended Complaint, and basing its denial on that ground denies generally and specifically each and every allegation therein contained.

II.

Further answering Subdivision (c) of said Paragraph 5 of said Second Amended Complaint, the District Council denies that the Respondents, or either of them, acting through any of their officers, agents, employees, or servants, have interfered with, restrained, or coerced, or are now interfering with, restraining, or coercing, their employees in the exercise of the rights of said employees to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection by contributing to or encouraging membership in any of the labor organizations named in said Subdivision (c) of said Paragraph 5, by instigating or soliciting membership in said labor organizations, or otherwise.

III.

The District Council admits that it, and the other labor organizations mentioned in Subdivision (d) of said Paragraph 5 of said Second Amended Complaint, entered into a contract with Pioneer Electric Company on January 2, 1946, and denies that it or any of the other labor organizations mentioned in said Subdivision (d) of said Paragraph 5, entered into any contract with the Respondent, O'Keefe and Merritt Manufacturing Company, and further denies that it or any of the other labor organizations mentioned in said Subdivision (d) of said Paragraph 5 entered into a contract with either respondent at a time when none of said labor organizations was the duly designated exclusive bargaining agent for the employees of either of said Respondents within the meaning of the National Labor Relations Act.

IV.

Further answering Subdivision (e) of said Paragraph 5 of the Second Amended Complaint, the District Council denies that the Union was ever, or now is, the duly designated exclusive bargaining representative of the employees of Pioneer Electric Company, or any of them.

V.

The District Council denies that any unit of employees of Respondent, O'Keefe and Merritt Manufacturing Company, has any materiality on any of the issues of this case.

VI.

Answering Paragraph 8 of said Second Amended Complaint, the District Council denies that there is any materiality in the fact, if it be a fact, that a majority of Respondent, O'Keefe and Merritt Manufacturing Company's employees in any unit did designate the Union as its representative for the purpose of bargaining collectively with Respondent, O'Keefe and Merritt Manufacturing Company, and in this connection the District Council denies that a majority or any of the employees of Pioneer Electric Company did designate the Union as its representative for the purpose of bargaining collectively with Pioneer Electric Company, and further denies that the Union is now, or ever has been, the exclusive representative of all or any of the employees of Pioneer Electric Company, for the purpose of collective bargaining with Pioneer Electric Company with respect to rates of pay, wages, hours, or other conditions of employment, or otherwise.

VII.

Answering Paragraph 11 of said Second Amended Complaint, the District Council denies that it or any of the other labor organizations named in said Paragraph 11 executed a contract of any kind with either of the Respondents on February 2, 1946, and denies that any contract entered into by it and any of the said other labor organizations with the Respondents, or either of them, was entered into at a time when none of said Unions was the duly designated exclusive bargaining agent of the employees

of the Respondents, or either of them, or at a time when the said labor organizations had been improperly or illegally assisted, as alleged in said Second Amended Complaint, or otherwise, or that any contract entered into by any of the said labor organizations is an illegal, invalid or void contract, or should be so declared.

Wherefore, the District Council prays that the said Second Amended Complaint be dismissed.

ARTHUR GARRETT,

Attorney for Los Angeles County District Council
of Carpenters, United Brotherhood of Carpen-
ters and Joiners of America, Affiliated With
American Federation of Labor.

State of California,
County of Los Angeles—ss.

Nick Cordil, being by me first duly sworn, deposes and says: That he is the Business Representative of Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, affiliated with American Federation of Labor, and as such is authorized to execute this verification on its behalf, on behalf of which this answer is filed, in the above-entitled action; that he has read the foregoing Answer of Los Angeles County District Council of Carpenters, etc., to Second Amended Complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are

therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ NICK CORDIL.

Subscribed and sworn to before me this 11th day of March, A.D. 1946.

[Notarial Seal]

/s/ ARTHUR GARRETT,
Notary Public in and for the County of Los Angeles, State of California.

[Affidavit of service by mail attached.]

[Endorsed]: Filed Mar. 12, 1946.

BOARD'S EXHIBIT No. 1-S

United States of America Before the National
Labor Relations Board, Twenty-first Region

No. 21-C-2689

O'KEEFE AND MERRITT MANUFACTURING
COMPANY and L. G. MITCHELL, W. J.
O'KEEFE, MARION JENKS, LEWIS M.
BOYLE, ROBERT J. MERRITT, ROBERT
J. MERRITT, JR., and WILLIAM J. DU-
RANT, Individually and as Co-partners, d/b/a
PIONEER ELECTRIC COMPANY
and

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C. I. O.,
et al.

ANSWER OF INTERNATIONAL MOLDERS
AND FOUNDRY WORKERS, LOCAL No.
374, AFFILIATED WITH THE AMERICAN
FEDERATION OF LABOR

Comes now International Molders and Foundry Workers of North America, Local No. 374, affiliated with the American Federation of Labor, erroneously named herein as Local No. 376, hereinafter referred to as Local No. 374, and answering the second amended complaint on file herein, admits, denies and alleges as follows:

I.

The said Local No. 374 alleges that it has no knowledge as to the truth or falsity of the facts alleged in Paragraph 5, or of subdivisions A, B, E. F. or G, of said Paragraph 5; in Paragraph 6; in Paragraph 9; in Paragraph 10; in Paragraph 12; or in Paragraph 13, and basing its denial on that ground denies generally and specifically each and every allegation therein contained.

II.

Further answering subdivision C, of Paragraph 5, the said Local No. 374 denies that the respondents acting through any of their officers, agents and employees or servants, have interfered with, restrained or coerced, or now are interfering with, restraining or coercing, their employees in the exercise of the rights of said employees to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activi-

ties for the purposes of collective bargaining, or other mutual aid or protection by the following acts or conduct, or of any acts or conduct, or at all: contributing to or encouraging membership in International Molders and Foundry Workers, Local No. 374, affiliated with the American Federation of Labor; Stove Mounters International Union of North America, Local No. 125, affiliated with the American Federation of Labor; United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, or any of them, by instigating or soliciting membership in said Labor Organizations, or any of them.

III.

Further answering subdivision D of said Paragraph 5, the said Local No. 374 admits that on or about the 2nd day of January, 1946, Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, and its affiliated Locals, and the other Labor Organizations mentioned in said subdivision D, entered into a contract with Pioneer Electric Company, but the said Local No. 374 denies that the said contract was entered into at a time when none of said Labor Organizations was the duly designated exclusive bargaining agent for said employees within the meaning of the National Labor Relations Act, and denies that the respondent O'Keefe and Merritt Manufacturing Company entered into any contract with any of said Labor Organizations.

IV.

Further answering subdivision E of said Paragraph 5, the said Local No. 374 denies that the Union, as described in said second amended complaint, is now, or ever was, the duly designated exclusive bargaining representative, or the representative at all, of the employees of Pioneer Electric Company, or of any of said employees.

V.

Answering Paragraph 7 of said second amended complaint, the said Local No. 374 denies that any bargaining unit of the employees of the respondent O'Keefe and Merritt Manufacturing Company has any materiality on any of the issues in this case.

VI.

Answering Paragraph 8 of said second amended complaint, the said Local No. 374 denies that the fact, if it be a fact, that a majority or any of the employees of the respondent O'Keefe and Merritt Manufacturing Company did designate the Union as its representative for the purpose of bargaining collectively with respondent O'Keefe and Merritt Manufacturing Company, or that the Union is, or ever was, such bargaining representative, is not material to any of the issues of this case.

VII.

Answering Paragraph 11, the said Local No. 374 denies that any exclusive collective bargaining contract was entered into by it, or any of the other Labor Organizations affiliated with the American

Federation of Labor named in said second amended complaint, on February 2, 1946, with the respondents, or either of them, or at any other time, or at all, at a time when none of said Unions was the duly designated exclusive bargaining agent of the employees of Pioneer Electric Company, or at a time when said Labor Organizations, or any of them, have been improperly or illegally assisted as alleged in said second amended complaint, or at all, and further denies that any contract entered into between the said Labor Organizations, and either of respondents, is an illegal, invalid or void contract, or should be so declared.

Wherefore, Local No. 374 prays that the said second amended complaint be dismissed.

/s/ ARTHUR GARRETT,
Attorney for International Molders and Foundry
Workers, Local 374, Affiliated With the Amer-
ican Federation of Labor, Erroneously Named
Herein as Local No. 376.

Power of Attorney

We, the undersigned officers of International Molders and Foundry Workers of North America, Local No. 374, hereby certify that William A. Lazzarini is the International Vice President of the International Molders and Foundry Workers of North America, affiliated with the American Federa-
tion of Labor, and as such is duly authorized by the said Local No. 374 to sign and verify answers

and other pleadings on behalf of said Local Union No. 374, in the within entitled proceeding.

.....
President.

/s/ G. A. DREGER,
Secretary.

State of California,
County of Los Angeles—ss.

William A. Lazzerini, being by me first duly sworn, deposes and says: That he is the International Vice President of International Molders and Foundry Workers of North America, affiliated with the American Federation of Labor, and as such is duly authorized to make this verification on behalf of Local No. 374 of said International, in the above-entitled action; that he has heard read the foregoing Answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ WILLIAM A. LAZZERINI.

Subscribed and sworn to before me this 11th day of March, A.D. 1946.

[Seal] /s/ ARTHUR GARRETT,
Notary Public in and for the County of Los Angeles, State of California.

[Affidavit of service by mail attached.]

[Endorsed]: Received Mar. 12, 1946.

BOARD'S EXHIBIT No. 1-T

United States of America Before the National
Labor Relations Board, Twenty-first Region

No. 21-C-2689

O'KEEFE AND MERRITT MANUFACTURING
COMPANY and L. G. MITCHELL, W. J.
O'KEEFE, MARION JENKS, LEWIS M.
BOYLE, ROBERT J. MERRITT, ROBERT
J. MERRITT, JR., and WILLIAM J. DU-
RANT, Individually and as Co-partners, d/b/a
PIONEER ELECTRIC COMPANY,

and

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C. I. O.,
et al.

ANSWER OF STOVE MOUNTERS INTERNA-
TIONAL UNION OF NORTH AMERICA,
LOCAL No. 125, AFFILIATED WITH THE
AMERICAN FEDERATION OF LABOR,
TO SECOND AMENDED COMPLAINT

Comes now Stove Mounters International Union
of North America, Local No. 125, affiliated with the
American Federation of Labor, and answering the
second amended complaint on file herein, admits,
denies and alleges as follows:

I.

The said Local No. 125 alleges that it has no
knowledge as to the truth or falsity of the facts
alleged in Paragraph 5, or of subdivisions a, b, e, f,

or g, of said Paragraph 5; in Paragraph 6; in Paragraphs 9; in Paragraph 10; in Paragraph 12; or in Paragraph 13, and basing its denial on that ground denies generally and specifically each and every allegation therein contained.

II.

Further answering subdivision c, of Paragraph 5, the said Local No. 125 denies that the respondents acting through any of their officers, agents and employees or servants, have interfered with, restrained or coerced, or now are interfering with, restraining or coercing their employees in the exercise of the rights of said employees to self-organization, to form, join or assist Labor Organizations to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection by the following acts or conduct, or by any acts or conduct, or at all: contributing to or encouraging membership in Stove Mounters International Union of North America, Local No. 125, affiliated with the American Federation of Labor; International Molders and Foundry Workers Union of North America, Local No. 374, affiliated with the American Federation of Labor, erroneously designated in the second amended complaint as Local No. 376; United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, or any of them, by instigating or soliciting membership in said Labor Organizations, or any of them.

III.

Further answering subdivision d, of said Paragraph 5, the said Local No. 125 admits that on or about the 2nd day of January, 1946, Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, and its affiliated Locals, and the other Labor Organizations mentioned in said subdivision d, entered into a contract with Pioneer Electric Company, but the said Local No. 125 denies that the said contract was entered into at a time when none of said Labor Organizations was the duly designated exclusive bargaining agent for said employees within the meaning of the National Labor Relations Act, and denies that the respondent O'Keefe and Merritt Manufacturing Company entered into any contract with any of said Labor Organizations.

IV.

Further answering subdivision e, of said Paragraph 5, the said Local No. 125 denies that the Union, as described in said second amended complaint, is now, or ever was, the duly designated exclusive bargaining representative, or the representative at all, of the employees of Pioneer Electric Company, or of any of said employees.

V.

Answering Paragraph 7 of said second amended complaint, the said Local No. 125 denies that any bargaining unit of the employees of the respondent

O'Keefe and Merritt Manufacturing Company has any materiality on any of the issues in this case.

VI.

Answering Paragraph 8 of said second amended complaint, the said Local No. 125 denies that the fact, if it be a fact, that a majority or any of the employees of the respondent O'Keefe and Merritt Manufacturing Company did designate the Union as its representative for the purpose of bargaining collectively with respondent O'Keefe and Merritt Manufacturing Company, or that the Union is or ever was such bargaining representative, is material to any of the issues of this case.

VII.

Answering Paragraph 11, the said Local No. 125 denies that any exclusive collective bargaining contract was entered into by it, or any of the other Labor Organizations affiliated with the American Federation of Labor named in said second amended complaint, on February 2, 1946, with the respondents, or either of them, or at any other time, or at all, at a time when none of said Unions was the duly designated exclusive bargaining agent of the employees of Pioneer Electric Company, or at a time when said Labor Organizations, or any of them, have been improperly or illegally assisted as alleged in said second amended complaint, or at all, and further denies that any contract entered into between the said Labor Organizations and either of respondents, is an illegal, invalid or void contract, or should be so declared.

Wherefore, Local No. 125 prays that the said second amended complaint be dismissed.

/s/ ARTHUR GARRETT,
Attorney for Stove Mounters International Union
of North America, Local No. 125

Power of Attorney

We, the undersigned Officers of Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor, hereby certify that John D. Roberts is the Special Representative of Stove Mounters International Union of North America, affiliated with the American Federation of Labor, and as such is duly authorized by the said Local Union 125 to sign and verify answers and other pleadings on behalf of said Local Union 125 in the within entitled proceeding.

Dated: March 11, 1946.

[Seal] /s/ HUBERT CUNNINGHAM,
 President.

/s/ VESTER GRAHAM,
 Secretary.

State of California,
County of Los Angeles—ss.

John D. Roberts, being by me first duly sworn, deposes and says: That he is the Special Representative of Stove Mounters International Union of North America, affiliated with the American Fed-

eration of Labor, and as such is duly authorized to make this verification on behalf of Local No. 125 of said International Union, in the above-entitled action; that he has heard read the foregoing Answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ JOHN D. ROBERTS.

Subscribed and sworn to before me this 11th day of March, A.D. 1946.

[Seal] /s/ ARTHUR GARRETT,
Notary Public in and for the County of Los Angeles, State of California.

[Affidavit of service by mail attached.]

[Endorsed]: Received Mar. 12, 1946.

United States of America Before the National
Labor Relations Board

Case No. 21-C-2689

In the Matter of

O'KEEFE AND MERRITT, INC., and L. G.
MITCHELL, W. J. O'KEEFE, MARION
JENKS, LEWIS M. BOYLE, ROBERT J.
MERRITT, ROBERT J. MERRITT, JR., and
WILLIAM J. DURANT, d/b/a PIONEER
ELECTRIC COMPANY,

and

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C. I. O.,
and STOVE MOUNTERS INTERNATIONAL UNION OF AMERICA, Affiliated
With the AMERICAN FEDERATION OF
LABOR, Party to the Contract; and LOS AN-
GELES METAL TRADES COUNCIL,
A. F. L., Party to the Contract.

ORDER DESIGNATING TRIAL EXAMINER

It Is Hereby Ordered that Henry J. Kent act as
Trial Examiner in the above case and perform all
the duties and Exercise all the powers granted to
trial examiners under the Rules and Regulations—
Series 3, as amended, of the National Labor Rela-
tions Board.

Dated, Washington, D. C., March 6, 1946.

[Seal] /s/ FRANK BLOOM,
 Chief Trial Examiner.

United States of America Before the National Labor Relations Board, Trial Examining Division, Washington, D. C.

Case No. 21-C-2689

In the Matter of

O'KEEFE AND MERRITT MANUFACTURING COMPANY and L. G. MITCHELL, W. J. O'KEEFE, MARION JENKS, LEWIS M. BOYLE, ROBERT J. MERRITT, ROBERT J. MERRITT, JR., and WILBUR G. DURANT,¹ Individually and as Co-partners, Doing Business as PIONEER ELECTRIC COMPANY,

and

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C. I. O.,
and

STOVE MOUNTERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 125, Affiliated With the AMERICAN FEDERATION OF LABOR; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 389, Affiliated With AMERICAN FEDERATION OF LABOR; INTERNATIONAL MOLDERS & FOUNDRY WORKERS UNION OF

¹Incorrectly named in the complaint as William J. Durant.

NORTH AMERICA, LOCAL No. 374,² Affiliated With AMERICAN FEDERATION OF LABOR; DISTRICT LODGE 94,³ for and on Behalf of Its Affiliate LOCAL 311 of the INTERNATIONAL ASSOCIATION OF MACHINISTS; BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA, LOCAL 792, Affiliated With AMERICAN FEDERATION OF LABOR; LOS ANGELES COUNTY DISTRICT COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, Affiliated with AMERICAN FEDERATION OF LABOR;⁴ and REFRIGERATOR FITTERS UNITED ASSOCIATION, LOCAL 508, Affiliated With AMERICAN FEDERATION OF LABOR, Parties to the Contract.

Mr. Maurice J. Nicoson and Mr. Eugene M. Purver, for the Board.

Mr. Cecil W. Collins of Los Angeles, Calif., for the respondents.

²Erroneously named in the complaint as Local No. 376.

³Erroneously named in the complaint as District Lodge 96.

⁴Amended on motion to add Los Angeles County District Council of Carpenters to name as previously stated in the complaint.

Katz, Gallagher & Margolis, by Mr. Milton S. Tyre, of Los Angeles, Calif., for the CIO.

Mr. Arthur Garrett and Mr. John Leo Harris, both of Los Angeles, Calif., for the Stove Mounters, the Moulders and the Carpenters.

Mr. Dale O. Reed, of Los Angeles, Calif., for the IAM.

Mr. John Stevenson of Los Angeles, Calif., for the Teamsters.

Mr. Alexander H. Schullman and Mr. David S. Smith, both of Los Angeles, Calif., for the Painters.

INTERMEDIATE REPORT

[As Corrected by Erratum of Trial Examiner of
June 4, 1946.]

Statement of the Case

Upon charges and amended charges duly filed by the United Steelworkers of America, Stove Division, Local 1981, C.I.O., herein called the CIO, the National Labor Relations Board, herein called the Board, by its Regional Director for the Twenty-first Region (Los Angeles, California), issued its second amended complaint dated February 21, 1946, against O'Keefe and Merritt Manufacturing Company, herein called the corporation respondent and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company, herein called the partnership respondent, while both companies herein are jointly called the

respondents, alleging that the above-named respondents had engaged in and are engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, amendments to the complaint and notices of hearing were duly served upon the respondents, the CIO, Stove Mounters International Union of North America, Local 125, AFL, herein called the Stove Mounters; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, AFL, herein called the Teamsters; International Moulders and Foundry Workers Union of North America, Local 374, AFL, herein called the Moulders; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists, herein called the IAM; Brotherhood of Painters, Decorators and Paper-hangers of America, Local 792, AFL, herein called the Painters; Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL, herein called the Carpenters and Refrigerator Fitters United Association, Local 508, AFL, herein called the Refrigerators.

With respect to the unfair labor practices, the complaint alleged in substance (1) that the respondents have interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act by the following acts and conduct; (a) inducing and attempting to in-

duce said employees to transfer their union affiliation from the CIO to one of the several American Federation of Labor unions above mentioned, or the IAM; (b) transferring or pretending to transfer the operation of the business from the corporation respondent to the partnership respondent; (c) contributing to and encouraging membership in one of the several American Federation of Labor unions above mentioned, or the IAM, by instigating and soliciting membership in said labor organizations; (d) entering into a contract with the several American Federation of Labor unions above mentioned, and the IAM, at a time when none of said labor organizations was the duly designated exclusive bargaining agent for the said employees within the meaning of the Act; (e) attempting by offers of payment of money and other inducements to influence and persuade John A. Despol and G. J. Conway, representatives of the CIO, to surrender the CIO's position as duly designated exclusive bargaining representative of the employees, and to discontinue further activity on behalf of the CIO; (f) threatening their employees with discharge or other disciplinary action if they joined the CIO, refused to withdraw from membership in the CIO, assisted the CIO, or designated the CIO as their bargaining agent; (g) questioning employees concerning their membership in or desires for membership in or designation of the CIO; (2) that on or about November 20, 1945, and at all times thereafter, the respondents failed and refused to bargain with the CIO as the representative of their employees in a

duly certified appropriate bargaining unit; and (3) that by the said acts the respondents engaged in and are now engaging in unfair labor practices within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act.

Thereafter, the respondents filed a joint answer admitting, in effect, some of the allegations in the complaint, but denying engaging in the unfair labor practices alleged. The said answer also affirmatively averred that the employees of the corporation respondent had become dissatisfied with the CIO and for that reason voluntarily shifted their allegiance to the various American Federation of Labor unions named above, or to the IAM; that the partnership respondent was an independent legal entity engaged in its own business prior to the transfer of certain manufacturing facilities by the corporation respondent to the partnership respondent; that the said transfer of business operations was consummated for proper business reasons and not for the purpose of evading any obligation of the respondents to bargain with the CIO; and that the partnership respondent being under no legal obligation to bargain with any labor organization entered into collective bargaining agreements with the above named American Federation of Labor unions, and the IAM, after receiving proper proof that the said organizations represented a majority of its employees in an appropriate unit. The Stove Mounters, the Carpenters, and the Moulders filed separate answers putting in issue the material alle-

gations of the complaint insofar as they pertained to these said organizations.

Pursuant to notice, a hearing was held at Los Angeles, California, on March 6, 1946, and from March 13 to March 28, inclusive, 1946, before the undersigned, Henry J. Kent, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondents, the CIO, the Stove Mounters, the Carpenters, the Moulders, the IAM, the Painters and the Teamsters were all represented by counsel and participated in the hearing.⁵ Full op-

⁵Although counsel for the respondents entered a general appearance and filed a joint and general answer on behalf of all of the respondents with the Board's attorney prior to the opening of the hearing on March 6, 1946, on March 13, 1946, the second day of the hearing, he stated on the record that he was only appearing for those respondents duly served with service of process, and in his brief contends, in effect, that some of the copartners were not legally served with process. The record shows that due service of process by registered mail was made upon all the respondents as provided by Section 11 (4) of the Act. Furthermore, assuming there had been defective service on any respondent, objections to such service was waived by the entry of a general appearance and the filing of general answer, on behalf of all respondents. The record shows that Refrigerator Fitters United Association, Local 508, A. F. of L., named in the complaint as a party to the contract, did not, in fact, sign the contract. Although duly served with process, it failed to enter an appearance or otherwise participate in the hearing. Counsel for International Brotherhood of Electrical Workers, Local Union B-11, A. F. of L., moved orally for leave to intervene at the opening of the hearing. The under-

portunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing on the issues was afforded all parties. At the opening of the hearing, counsel for the respondents and the several American Federation of Labor unions moved orally for a continuance for further time to file answers to prepare for hearing. Counsel for the Board conceded that by reason of delays in mail deliveries, some of the parties served were entitled to a continuance of 1 or 2 days. The undersigned, over the objection by counsel for the CIO, granted an extension of time of 5 days to file answers and adjourned the hearing 1 week. At the close of the presentation of evidence by the Board on Friday, March 22, 1946, counsel for the several American Federation of Labor unions moved orally for a continuance for further time for preparation. The undersigned granted an adjournment to March 26 over objections from counsel for the CIO. Prior to presenting evidence on behalf of the respondents, their counsel, by written motions moved that the allegations of the complaint be dismissed. Both motions were denied without prejudice to later renewal. At the conclusion of the hearing, these motions were renewed by counsel for the respondents and the undersigned ruled that the said motions would be further considered and disposed of in his Interme-

signed granted counsel further time to present a written motion respecting intervention. Thereafter, by letter in evidence, its counsel withdrew the request for leave to intervene.

diate Report. At the conclusion of the hearing, counsel for the Board moved to conform the complaint to the proof with respect to formal matters, and the motion was granted without objection. Counsel for the Painters also at this time moved to dismiss the allegations of the complaint insofar as they concerned the Painters. Ruling was reserved and is disposed of below in this report. Counsel for the Stove Mounters, the Moulders, and the Carpenters presented oral argument before the undersigned but argument was waived by all other parties. All counsel were granted 20 days to file briefs with the undersigned and briefs have been received respectively from counsel for the respondents, the Board, the Stove Mounters, the Moulders, the Carpenters and the Painters.

Upon the basis of the foregoing and on the entire record, after having heard and observed the witnesses and considered all of the evidence, the undersigned makes the following:

Findings of Fact

I. The Business of the Respondents

The situs of the alleged unfair labor practices is a certain manufacturing plant in the City of Los Angeles, California. The plant was owned and operated by the corporation respondent, for many years, in connection with its business operations until shortly after the beginning of the last World War, when certain changes in plant operations were effected as set forth below.

a. The Business of the Corporation Respondent

O'Keefe and Merritt Manufacturing Company is a California corporation originally chartered in 1920 with its principal office and plant at Los Angeles, California. Prior to about February 4, 1946,⁶ it was engaged in the business of manufacturing and selling gas appliances and electric refrigerators, except for a period during the last World War beginning early in 1942 until shortly after V-J Day (to wit, August 14, 1945) when it was solely engaged as a prime contractor in the manufacture of electrical generator sets and various types of ammunition for the United States Government. During 1945, the corporation respondent sold products of an approximate value of \$2,000,000, of which about 10 per cent in value was sold in and shipped to states of the United States other than the State of California. It admits that it is engaged in commerce within the meaning of the Act.

During all the times material herein, and at the time of the hearing, the officers of the corporation respondent consisted of Daniel P. O'Keefe, president; W. J. Boyle, vice-president, and Robert J. Merritt, secretary-treasurer. The directors are Daniel P. O'Keefe, Robert J. Merritt, W. J. Boyle, Lu-

⁶As further appears below, corporation respondent on this date transferred substantially all of its manufacturing facilities and production employees to Pioneer, the partnership respondent, retaining only its technical designing staff, its sales and service organization and some of its maintenance employees.

cille Merritt, and William J. O'Keefe, the latter also serving in the capacity of general manager for O'Keefe and Merritt, when it was operating its own production facilities. The stock in the corporation is owned approximately as follows: Daniel P. O'Keefe 23.7 per cent; William J. O'Keefe, 4.8 per cent; Robert J. Merritt, 12.5 per cent; Lucille A. Merritt, 16.8 per cent; Robert J. Merritt, Jr., 4 per cent; W. J. Boyle, 8.7 per cent; Louis Boyle, 8.3 per cent; Evelyn Boyle, 8.3 per cent; Blanche Boyle, 8.3 per cent; Phyllis J. Mitchell, 4.8 per cent; W. J. and L. W. Boyle, trustees, .1 per cent; Marion E. Jenks, .1 per cent; John E. Boyle, .1 per cent; and Arline B. Oliphant, .1 per cent.

b. The Business of the Partnership Respondent

Pioneer Electric Company, the partnership respondent, was formed in 1942 by Robert J. Merritt, Louis Boyle and Willis Boyle for the purpose of engaging as a sub-contractor in the manufacture of war materials on a contract entered into by the corporation respondent with the United States Government as the prime contractor. On or about January 1, 1944, Robert J. Merritt, Jr., became a member of the partnership. All manufacturing operations of the partnership were carried on in a part of the O'Keefe and Merritt plant under lease to the partnership at a monthly rental of \$500. By September 17, 1945, all of the government contracts had been cancelled and over 80 per cent of its employees had been terminated.

On or about November 15, 1945, the partnership firm was again enlarged by taking in W. J. O'Keefe, Marion Jenks, W. G. Durant and L. J. Mitchell,⁷ at which time Willis J. Boyle withdrew from the partnership firm. Durant, the managing partner, owns a one-fourth interest and the other six partners each own a one-eighth interest in the partnership firm. New articles of partnership were entered into which indicate that the partnership intended to engage in the manufacture and sale of electrical equipment. From November 20, 1945, to January 31, 1946, it employed about 15 production employees.

On or about January 31, 1946, the corporation respondent transferred to the partnership respondent all of its manufacturing facilities and, on or about the same day, transferred approximately 300 of its production employees to the payroll of the partnership respondent. The partnership respondent has since that time continued to operate all of the manufacturing facilities at the Los Angeles plant. Pioneer admits that it is engaged in commerce within the meaning of the Act.

⁷It will be noted that all members of the partnership firm are either officers, directors, or stockholders of the O'Keefe and Merritt corporation, except Durant and Mitchell. Durant, since 1942, was chief engineer, and Mitchell, for a longer period of years, had been serving as auditor for the corporation respondent. Mitchell is also the husband of Phyllis J. Mitchell, a stockholder of the corporation respondent and a daughter of Daniel O'Keefe, its president.

II. The Organizations Involved

United Steelworkers of America, Stove Division, Local 1981, affiliated with the Congress of Industrial Organizations; Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, affiliated with the American Federation of Labor; District Lodge 94 for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paper-hangers of America, Local 792, affiliated with the American Federation of Labor; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, are all labor organizations admitting to membership employees of the above-named respondents at their Los Angeles, California, plant.

III. The unfair labor practices

A. Background of labor relations and chronology of events

As noted above, the corporation respondent was engaged in the manufacture and sales of gas stoves, other gas appliances and electric refrigerators for many years prior to the last World War. In 1936 or 1937 the American Federation of Labor attempted to organize its employees and at the time issued a charter to a local union comprised of em-

ployees at the plant. This union, however, was never accorded recognition as a bargaining representative of the employees. The plant was struck by the A. F. of L. in 1936 or 1937, picketed until the United States entered the last World War and the company has thereafter continued to be posted on the American Federation of Labor's Unfair List. During the winter of 1943 and 1944 a CIO organization, other than the charging union herein, attempted to organize the plant and at the time filed a petition for Investigation and Certification of Representatives. The Board, on April 29, 1944, dismissed the petition because of failure of the petitioning union to make a substantial showing of representation.⁸

In September, 1945, the CIO, as herein named, started an organizational campaign among the corporation respondent's employees and some of the A. F. of L. unions herein named engaged in a competing campaign at or about the same time. On October 23, 1945, the CIO filed a petition for Investigation and Certification of Representatives.⁹ Subsequently, on November 14, 1945, the corporation respondent, the CIO and the Los Angeles Metal Trades Council, A. F. of L., entered into a consent

⁸Matter of O'Keefe & Merritt Manufacturing Company and O'Keefe & Merritt Division, Local 2018, affiliated with the United Steelworkers of America, CIO, 56 N.L.R.B. 102.

⁹Case No. 21-R-3110.

election agreement¹⁰ and an election was held under the auspices of the Board on November 20, 1945, which was won by the CIO. A Tally of Ballots was duly served on all parties which shows: that there were 341 eligible voters in the unit; that 296 ballots were voted; and that the CIO received 177 votes, Los Angeles Metal Trades Council, A. F. of L. 114, and that 5 votes were cast for neither. The Regional Director thereafter duly served upon the parties his Consent Determination of Representatives dated November 28, 1945, finding that the CIO was the majority representative for the employees of the corporation respondent in the unit set forth in the consent election agreement. No objections to the conduct of the ballot, nor to the Regional Director's determination of representation based on the results of the election were filed by any of the parties participating in the election, but counsel for the respondents herein, now asserts that the election was invalid for reasons further discussed

¹⁰The record fails to show to what extent, if any, employees had designated any of the craft unions to serve as their representative. According to the evidence, the Stove Mounters, Carpenters, Moulders and Teamsters of the A. F. of L. and the I.A.M. were the only craft organizations apparently claiming to represent any of the employees at the time the election was held. It is noted that H. B. McMurry, a representative of I.A.M., signed the consent election agreement on behalf of the Los Angeles Metal Trades Council, A. F. of L. This fact would lead the employer to regard the I.A.M. as an affiliate of the A. F. of L. regardless of the actual status of I.A.M., and the organization would benefit by any pro-A. F. of L. activities by the employer.

below in the report and which is found to be lacking in merit.

Following the said certification, the CIO requested the corporation respondent to bargain with it as the majority representative of its production and maintenance employees. Several bargaining conferences were held during December 1945 and January 1946, but no collective bargaining agreement was ever consummated. During January 1946, when the CIO was aggressively attempting to negotiate an agreement, the corporation was concurrently negotiating with the partnership respondent concerning the transfer of all of its manufacturing facilities to the partnership. On January 31, 1946, the corporation respondent transferred, by lease, all of its manufacturing facilities, together with the employees engaged on such operations at the Los Angeles plant, to the partnership. On or about the same day, the partnership entered into a union shop agreement with the I.A.M. and various American Federation of Labor unions who participated as parties in this proceeding covering all of the employees presently on the partnership company's payroll.¹¹

¹¹The record shows that on November 20, 1945, the date of the election, the partnership had approximately 15 production and maintenance employees on its pay roll and that the number of such employees did not materially increase until January 31, when it took over the 300 former employees from the corporation. The record fails to show that there has been any substantial change in the number of employees on either the corporation or partnership pay rolls since that time.

Following the transfer of operations and of the employees to the partnership, the CIO again requested the corporation to bargain for all of the employees in the previously certified unit. The corporation agreed to resume bargaining negotiations respecting the approximately 40 production and maintenance employees still remaining on its payroll, but refused to bargain regarding the employees transferred to the payroll of the partnership.

B. Interference, restraint, and coercion prior to the consent election

On or about October 1, 1945, during the initial stages of the CIO's organizational drive, employee Charles Spallino, the then president of the Five and Over Club, and employee John Levasco¹² were in

¹²Charles Spallino, herein called Spallino, has been an employee of the corporation in one of its various production and service departments for about 19 years. His brother Joseph Spallino is presently the plant superintendent of the corporation respondent. John Levasco has been continuously employed since 1936, except for a break in his service when he served in the United States Navy during World War II. He returned to work in April 1945 and was given the job as chief plant inspector, which he held until shortly after V-J Day, when he was transferred to a job as material expediter. During the latter period, he also, on occasions, served as an agent of the corporation in connection with the sale of surplus machinery at the plant.

The Five and Over Club was organized in 1936 by President O'Keefe for the alleged purpose of functioning as an employees' social and benefit or-

the office of Daniel O'Keefe, the president of the corporation respondent. Either Levasco or Spallino asked O'Keefe what action the Five and Over Club should take concerning the activities of the CIO or the A. F. of L. during the then current organizational drives. According to the testimony of O'Keefe, Spallino and Levasco, which is in general agreement, O'Keefe told the two employees that he would rather not have to deal with either of the Unions, but if he was obliged to, he would prefer to deal with the A. F. of L. in order that the company's name might be stricken from the latter's unfair list, thus assuring a better market for the company's products. O'Keefe then told them that he did not want to dictate the policy for the Five

ganization. All employees with over 5 years service, including office and clerical employees, were eligible to membership. Since its organization, Spallino served as vice-president for 4 years and as president for 3 years and was its president during the year 1945. It apparently engaged in some of the functions of a labor organization, because it sought to intervene in the representation case above-mentioned (56 N.L.R.B. 102) decided by the Board in April 1944, but its status was not determined in those proceedings because the petition was dismissed on other grounds. There are no allegations in the complaint regarding it, and it asserted no interest in this proceeding. The record shows that in February 1945, pursuant to a request from President O'Keefe, Spallino appointed a grievance committee, picked from members of the organization to present grievances on behalf of all employees of the corporation, and that as president of this organization he was permitted to leave his work, almost at will, to visit all departments of the plant in connection with the activities of the organization.

and Over Club and requested them to speak to Cecil Collins, the respondent's counsel herein, concerning the matter.¹³ A few days later, the two men met with Collins and engaged in a similar conversation with him. According to Spallino's version, which the undersigned credits, Collins told them: it looked as if one of the two unions would succeed in organizing the plant; that it would be better for the company if the A. F. of L. prevailed; that he would arrange to have an A. F. of L. representative meet with them in a few days; that a few days later John Roberts, a representative of the Stove Mounters, A. F. of L., came to the plant while Spallino and Levasco were working and requested a plant guard to call them to the plant entrance; that they met Roberts there and at the time Roberts handed them about 100 application cards; that after receiving the cards, Spallino proceeded to solicit other employees to sign some of the cards during working hours; and that a few days later Spallino returned about 38 to 40 signed cards to Roberts after signing his, Spallino's name on them as a witness to the applicants signatures.¹⁴

About 3 weeks before the election, according to the following uncontradicted testimony of Spallino

¹³The record shows that, in addition to representing the respondents as legal counsel at this hearing, Collins was also labor relations advisor for both of the respondents.

¹⁴Levasco gave no testimony concerning Roberts' visits to the plant in connection with the card transactions. Neither Collins nor Roberts testified at the hearing.

which the undersigned credits, he and Levasco were called to Collins' office and met several A. F. of L. representatives who were present there. The union representatives asked Spallino in the presence of Collins how the employees in the various departments generally expressed themselves in respect to A. F. of L. or CIO affiliation. Spallino told them that a considerable number of the employees favored the CIO and advised them to hold some A. F. of L. meetings for the employees and stated, at the time, that he could arrange to hire a hall near the plant to hold such meetings, whereupon Roberts, the Stove Mounters representative, authorized Spallino to make arrangements to rent the hall. The hall was rented by Spallino and thereafter A. F. of L. handbills were passed out at the plant inviting the employees to attend an A. F. of L. meeting to be held there about 2 weeks before the election. The meeting was attended by approximately 30 employees, and about a week later another A. F. of L. meeting was held at the same place.¹⁵

A day or two before the November 20 election, Spallino and Levasco met with President O'Keefe in his office and engaged in a conversation concerning the contents of a document that might be used either as the basis for a handbill to be distributed on behalf of the Five and Over Club before the

¹⁵Roberts or none of the A. F. of L. representatives present at this meeting were called to testify concerning it and Spallino's testimony was not refuted by Levasco in respect to these incidents.

election or as the basis of a speech before Five and Over Club members. O'Keefe, after considering the contents, told the two employees, after first suggesting some amendments to the statements made in the paper, that it would then sound too much like a speech that might be delivered by him and recommended that it not be used as he would personally deliver a speech to the employees before the election.

On November 20, 1945, shortly after the corporation's employees returned from lunch, O'Keefe caused all of them to be assembled in the plant and addressed them concerning the election to be held at 4:30 on that afternoon. In his speech he stated in substance, that although he thought all unions were bad, he believed it was up to the employees to decide for themselves which of the 2 competing unions was the lesser of two evils; that if the A. F. of L. won, the company could sell more of its products than it could if the plant was organized by the CIO; that if he were an employee working in the stove industry he would prefer to vote for the A. F. of L. because substantially all organized plants in the stove industry worked under A. F. of L. agreements; and that if an employee found it necessary to change his job he would be unable to get work in such union shops unless he first joined the A. F. of L. He ended his speech with a request that they all vote and to vote for one of the two unions on the ballot rather than for neither organization.

At 4:15 o'clock, and just prior to the election which began at 4:30 o'clock on that same after-

noon,¹⁶ Spallino called a meeting of the Five and Over Club in the plant.¹⁷ The meeting was opened by Spallino who introduced Levasco. Levasco made a speech stating that he had been a member of the A. F. of L. for a number of years, that substantially all stove factories had A. F. of L. contracts, requested all of those present to vote for the A. F. of L. in the election and also told them that the CIO could not shut off the company's supply of steel as allegedly had been threatened by that union if the plant did not go CIO. Immediately following the close of this meeting, the employees attending it, who thereafter cast ballots, went to the polls to vote. Spallino and Levasco were the two A. F. of L. observers at the election.

Conclusions

The above-described course of conduct by the corporation respondent discloses an intention to frustrate self-organization among its employees. Not only were Spallino and Levasco permitted openly to engage in pro-A. F. of L. activities on company time and property but such activities were actually sponsored and encouraged by Collins who certainly could only be regarded as an important figure in

¹⁶The day shift at the plant ended at 4:30 o'clock.

¹⁷Admittedly, pursuant to a request from Spallino, the foremen in the various plant departments announced the time and place of the meeting to the employees working under them. About 200 Five and Over Club members attended and were paid for the 15 minutes time spent at the meeting.

the hierarchy of the plant management. Moreover, O'Keefe's speech to the employees on the day of the election unmistakably warned the employees that their job security was contingent upon the success of the A. F. of L. in the election. The coercive nature of O'Keefe's speech is self evident.¹⁸ The corporation respondent's defense that O'Keefe's speech was protected by the constitutional guarantees of free speech is discussed in the next section and found to be without merit. Furthermore, permitting the Five and Over Club to hold a pro-A. F. of L. meeting in the plant, on company time, immediately prior to the opening of the polls likewise constituted interference with the right of employees freely to select their own bargaining representative.

Upon all the foregoing, and upon the basis of the entire record, the undersigned finds that the respondent, by its entire course of conduct, including the sponsoring of the A. F. of L. activities of Spallino and Levasco among its employees on company time and property, the questioning of Spallino and Levasco, in the presence of Collins, by A. F. of L. representatives regarding the union affiliations of the employees, O'Keefe's warning to the employees that their economic security depended upon the success of the A. F. of L. in the election and in permitting the holding of a pro-A. F. of L. meeting

¹⁸See Matter of A. J. Showalter Company, 64 N.L.R.B. and cases cited therein, especially N.L.R.B. v. Star Publishing Co., 97 F. (2) 465 (C.C.A. 9).

in the plant just prior to the opening of the polls, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. The refusal to bargain and other acts of interference after the election

1. The November 27, 1945 speech of President O'Keefe

On November 27, a week after the election, O'Keefe delivered a second pro-A. F. of L. speech to the respondent corporation's employees in the plant during working hours. On this occasion, he told them in substance that he was disappointed in the results of the election; that Merritt, Sr., the secretary and treasurer of the corporation respondent and W. J. Boyle, its vice president who previously had dealings with the CIO, were both discouraged and wanted to sell the business; that because many of the products made in the plant were generally installed by mechanics belonging to the A. F. of L., such products might just as well be stamped "made in Japan" if an A. F. of L. label on them was lacking; and that "if we wish to do business with the builders and in the San Francisco territory, we have two alternatives—to contract enough of our labor to a firm with an A. F. of L. contract that would be satisfactory to the A. F. of L. in order that they would take us off the unfair sheet—or to take advantage of the

possibilities to sell this business to someone who has an A. F. of L. organization.” (Underscoring supplied.) Clearly this speech was an appeal to the employees to consider dropping their affiliation with their recently designated bargaining representative, the CIO, and to affiliate with the A. F. of L. It tends to explain the future course of conduct followed by the respondents, discussed in detail below.

The corporation respondent contends that the statements made by O'Keefe in both of his speeches were not violative of the Act, and were privileged under his constitutional right of free speech. The undersigned does not agree, for O'Keefe in both speeches unmistakably warned the employees that their economic security depended upon the ability of the corporation to effect some arrangement that would permit it to sell its products free of the threatened or existing boycott of the A. F. of L. and clearly constituted an appeal to them to affiliate with the A. F. of L., thus constituting interference with their right freely to select a bargaining representative of their own choice. The coercive nature of the statements made in both of the speeches are self-evident and hence, do not fall within the constitutional guarantee of free speech.¹⁹ That O'Keefe's warning was prompted by an apprehension, even if well founded, that its business would suffer unless it was able to manufacture its products in a manner satisfactory to the A. F. of L. does

¹⁹See N.L.R.B. v. Virginia Electric & Power Co., 319 U.S. 533.

not alter the force or effects of his statement²⁰ upon the employees in the exercise of their statutory rights, or remove it from the ambit of the Act.²¹ It is now well settled that an employer's fear of economic reprisal, or loss of business, resulting from the unionization of his employees, does not justify a commission of unfair labor practices.²² In any event, whether or not O'Keefe's speeches were per se violative of the Act, they were part and parcel of a pattern of course of conduct the total effect of which was an interference with the rights of the employees freely to select their own bargaining representatives, and, as such, were not protected by the constitutional right of free speech.

²⁰See N.L.R.B. v. Trojan Powder Co., 135 F. (2d) 337 (C.C.A. 3), cert. den. 320 U.S. 768.

²¹See N.L.R.B. v. Polson Logging Co., 136 F., (2d) 314 (C.C.A. 9).

²²See N.L.R.B. v. Star Publishing Co., 97 F. 465 (C.C.A. 9), in which the Court stated: “* * * The Act prohibits unfair labor practices without regard to the factors causing them * * * It permits no immunity because the employer may think that the exigencies of the moment require infraction of the statute. In fact, nothing in the statute permits or justifies its violation by the employer.” See also N.L.R.B. v. Gluek Brewing Co., 144 F. (2d) 847 (C.C.A. 9); Matter of A. J. Showalter Co., 64 N.L.R.B. No. 96, and Matter of Lakeshore Electric Mfg. Corp., 67 N.L.R.B. No. 105.

2. The appropriate unit and the unions majority representation therein.

As noted above, the Regional Director on November 28, 1945, issued his Consent Determination of Representatives, in the earlier representation proceeding²³ finding that, all production and maintenance employees employed at the Los Angeles plant of the company, excluding office clerical employees; guards; parcel post clerks; draftsmen; timekeepers; material expeditors; pattern makers and pattern maker helpers other than those working in sheet metal; experimental laboratory workers; and supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, pursuant to the terms of the consent election agreement previously entered into on November 14, 1945. No objections were raised to the conduct of the ballot or to the determination of the Regional Director.

Counsel for the respondents, however, now asserts that the election was invalid because Spallino, one of the A. F. of L. observers at the said election, admitted during the present hearing that he favored the C.I.O. and was not in good faith trying to advance the cause of the A. F. of L. at the time the

²³Matter of O'Keefe and Merritt Company and United Steelworkers of America, Stove Division, Local 1981, CIO, Case No. 21-R-3101.

election was held. The undersigned finds no merit in this contention. The respondent has no right to dictate to a participating union in a Board election whom the latter shall appoint as observers, and certainly the Board is under no duty to police the outside activities of observers selected by participating unions to act at elections. There was no substantial evidence in the record indicating that Spallino engaged in any improper conduct at the election that would justify setting it aside.

The undersigned finds, in accordance with the previous determination of the Regional Director, as noted above, that all production and maintenance employees at the Los Angeles plant of the corporation respondent excluding office clerical employees; guards; parcel post clerks; draftsmen; timekeepers; material expeditors; pattern makers and pattern maker helpers other than those working in sheet metal; experimental laboratory workers; and supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. He further finds that at all times material herein, the CIO was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate unit and that, pursuant to the provisions of Section 9 (a) of the Act, the CIO was at all such times, and now is, the exclusive representative of all of the employees in the aforesaid unit for purposes of collective bar-

gaining with respect to rate of pay, wages, hours of employment and other conditions of employment.

3. The refusal to bargain; the scheme devised for the purpose of attempting to circumvent bargaining with the CIO.
 - a. The bargaining negotiations with the CIO.

Following its certification, the CIO requested a bargaining conference with the corporation respondent for the purpose of negotiating a collective bargaining agreement. Cecil Collins, counsel and labor relations advisor for both of the respondents, was delegated to represent the corporation at the bargaining negotiations. On or about December 15, 1945, Collins met with CIO Representative John Despol, at Collins' office in the plant. On this occasion Despol presented a proposed agreement. Collins agreed to consider its terms and provisions and to meet again with Despol after he had had an opportunity for study. Later in December, 1945, and shortly before Christmas Day, a second meeting was held in Collins' office. On this occasion Despol pressed the CIO's demand for a 25-cent-per-hour general wage increase and for a closed shop. Collins took the position that the company would not grant the 25-cent general wage increase but would agree to a wage increase equal to or better than the then going rates in the industry. He also turned down the closed-shop provision and stated, in the alternative, that the company would grant a maintenance of membership clause coupled with a 15-day escape

clause, neither of which proposals were acceptable to the CIO. After further discussion the meeting ended with an understanding that the corporation would further consider the contract proposals and resume negotiations in a few days.

On January 3, 1946, at the third bargaining conference held also in Collins' office, Despol was present for the CIO, while Collins, and Fred Rotter, the corporation's personnel manager, were present as representatives of the corporation. Collins also invited employees Levasco, Frank Doyle, Sanchez and Derose, all of whom except Doyle were affiliated with the A. F. of L. to attend the meeting as observers. The employee group remained present during the entire meeting. Collins opened the negotiations by stating in the presence of the A. F. of L. adherents that the company would not grant a closed-shop to the CIO but at most would only agree to a maintenance of membership provision with a 15-day escape clause. Also during this meeting, according to the testimony of Rotter, Levasco and Doyle, Collins told Despol that further negotiations regarding a contract would probably be a waste of time, because the corporation was about to formulate a plan to transfer its manufacturing operations to the partnership respondent and that if the deal were consummated there would be few employees left for the CIO to represent; that Despol then accused Collins of "kidding" him, told Collins the CIO had expended large sums of money in organizing the plant and would strike if an agreement was not

signed; and that Collins then told Despol if the deal went through he would endeavor to have the company reimburse the Union for its organizing expenses if the latter would refrain from striking the plant and litigate any controversy between the company and the CIO before the Board or the courts. Despol denied that any such or similar conversation took place at this meeting, but further testified that, several weeks later, Collins on two occasions had personally offered Despol money to sell out the CIO and permit the A. F. of L. to take over the plant.²⁴ Based upon a consideration of all of the evidence in the record, especially the statements made by O'Keefe in his November 27 speech in which he publicly announced to all of the employees that, even at that time, such a plan was being considered, and from his observation of the witnesses, the undersigned accepts the above version of the conversation as testified to by Rotter, Levasco and Doyle as credible and finds it to be true. After further general discussion between Collins and Despol concerning seniority, holiday pay and night shift bonuses without arriving at any definite understanding, the meeting closed with an understanding that the negotiations would be continued on January 8.

Employees Cunningham, Castro, Daley and Arlotti, all A. F. of L. adherents, attended the January 8 meeting in response to an invitation from Collins. Despol objected to the presence of any

²⁴These two later incidents are further discussed below in Section III, E.

committee purporting to represent the A. F. of L. He did not insist on their leaving because he said the discussion would be limited to procedural questions not concerned with wages, but stated that from then on he would not consent to bargain in the presence of such a committee. No definite and binding commitments on any substantial matters were agreed upon at this meeting. At the close of the meeting, Despol requested the company to submit written counter-proposals to all provisions in the proposed CIO agreement not acceptable to the company. Collins agreed to do so within one week but none were ever submitted to the CIO.

The last bargaining conference was held at Collins' office in the plant on January 25, 1946, attended only by Despol and Collins. The question of wages and a vacation plan was discussed. Collins on behalf of the corporation respondent tentatively agreed to grant wage increase of from 10 to 15 per cent over existing rates then being paid in the industry, varying according to job classifications, but the CIO stood firm on its former demand of 25 cents per hour general increase. The meeting closed with a further demand from Despol that the company submit written counter-proposals to every provision in the CIO's proposed agreement not acceptable to the company. As noted above, and further discussed below, the corporation respondent transferred approximately 300 of about 340 employees constituting the unit found above to be appropriate to the partnership respondent on Jan-

uary 31, 1946. Thereafter in response to a further request to bargain, directed to the corporation respondent, the latter agreed to resume bargaining negotiations respecting the approximately 40 employees still remaining on its payroll, but refused to bargain regarding the transferred employees.

b. The joint liability of both companies in respect to the refusal to bargain and other unfair labor practices.

During the month of January, 1946, while the CIO was vigorously pressing its demands for a collective bargaining agreement, as discussed above, the corporation and the partnership respondents were proceeding to carry out a plan to effect a transfer of the corporation's manufacturing operations at the plant to the partnership and at the same time the partnership was conducting preliminary negotiations with the craft unions regarding a collective agreement for all production employees of both respondents at the plant although at the time, it had only 15 employees on its pay-roll. Admittedly, the certification of the CIO was, at the least, one of the motivating causes resulting in those activities, as President O'Keefe testified:

Q. You knew there was an election conducted at your factory by the National Labor Relations Board, did you not? A. Yes.

Q. And do you know who won the election?

A. Yes.

Q. Did that election have anything to do with this leasing?

The Witness: Well, it probably did something.

Q. (By Mr. Collins): What did it have to do with it?

A. Well, we were on the unfair list with the A. F. of L. and all our business come, or not all of it but a lot of it was done with the Building Trades, and I figured that we could lease to someone who would work under a contract, that would be satisfactory to the A. F. of L., we would probably be getting off the unfair sheet.

By an agreement dated January 2, 1946, but not signed until January 31, 1946,²⁵ the corporation transferred the manufacturing operations together with the employees engaged in such operations to the partnership. In summary the agreement provides: the corporation shall let and the partnership shall take over all of the plant building, excepting therefrom, for the use of the corporation, all front office space, the service department and warehouse space, including all production machinery and equipment for a term beginning January 31, 1946, [underscoring supplied] and ending December 31,

²⁵Although the record fails to show the actual date of signing, it does show that the closed-shop agreement with the craft unions, which also bears the date of January 2, 1946, as the apparent date of execution, was not signed until January 31, 1946, the date of the beginning of the term provided in the lease. Consequently, the undersigned concludes and finds that both agreements were signed on the same day, namely, January 31, 1946.

1946; that the partnership will manufacture all products required of it by the corporation on a cost-plus basis, the corporation to furnish all raw materials required for processing and to keep the premises in repair; that all employees of the corporation affected by the change in operations shall be hired by the partnership with no loss in wages or other advantages, including seniority; and that the partnership respondent, absent the express consent of the corporation respondent, will manufacture only those items which the lease expressly requires it to make for the corporation. The agreement further provides that the corporation shall bear the additional expense required of continuing certain employee benefits, namely, the pension fund, paid up insurance, contributions to the Five and Over Club and Christmas bonuses, which had previously been established by the corporation company at the plant. Clearly, by making these contributions to employees then on the partnership respondent's pay-roll the corporation respondent is still contributing to the said employees what may be regarded as supplementary wage inducements. In addition, President O'Keefe, in another speech delivered to the employees on February 1, 1946, the day after the transfer agreement and the union shop contract with the A. F. of L. were signed, told them that the partnership would formally take over all manufacturing operations on February 4, 1946; that the corporation would continue to operate the sales, service and shipping departments; that the partnership

company was granting increased rates on all manufacturing operations;²⁶ and that the corporation company would pay to all of the transferred employees back wages from the period from January 1 to February 4, 1946, based on the difference between what they would receive under the new wage scales and the scales in effect during January, 1946, these payments to be made on March 1, 1946, to all transferred employees continuing to work for the partnership respondent until March 1.²⁷

On the basis of the foregoing facts, the undersigned concludes and finds that not only did the transferred employees receive contributions of wages from both employers subsequent to the transfer of operations, but the promise of the back pay awards constituted further assistance to the craft unions for it is obvious that this promise was made to induce all employees who had not previously joined one of the craft unions promptly to do so.

Furthermore, the facts above clearly show: Respondents are engaged jointly in conducting a single business enterprise, the effective control of which is vested in the corporation respondent; that not only did the corporation respondent, both before and after the consent election, assist the craft unions in their efforts to organize the employees, but the partnership respondent also rendered material

²⁶Wage increases were granted to the craft unions in the union shop contract.

²⁷The contract provided that all employees covered "shall within 15 days become and remain members" of the craft unions, parties to the contract.

assistance to the said craft unions by joining in the scheme to divide up the operations of the corporation respondent's business in order to circumvent self-organization of the employees. The record plainly shows that the partnership respondent did not wait until the transfer of the operations and of the employees involved was an accomplished fact but proceeded to negotiate a collective bargaining agreement covering a group of employees despite prior knowledge that they had previously designated the CIO as their representative. Since the certification, as noted above, had been made on November 28, 1945, it certainly continued in full force and effect until January 31, 1946, when the union-shop contract was signed with the craft unions. The decisions of the Board and of the Courts, extending over a period of many years have well established that loss of membership by a designated union during the period when the employer is refusing, contrary to the provisions of the Act, to recognize and deal with it as the representative of its employees, will not be considered as an impairment of the right of the certified union to continue to represent the employees, nor a termination of the obligation of the employer to bargain with it.²⁸

Certainly the purpose of the Act may not be circumvented by a scheme rigged with the purpose and intent of setting aside the certification of a col-

²⁸See Board's Supplemental Decision in Matter of Karp Metal Products Co., Inc., 51 N.L.R.B. 621; Frank Bros. Co. vs. N.L.R.B., 321 U.S. 702.

lective bargaining representative selected as the result of self-organization by employees.²⁹ It would be implausible to find that the transfer of part of his plant operations by an employer subject to restraint under the Act relieved transferees with knowledge of his burdens.³⁰

Since the record fails to show that the partnership respondent participated in any dealings concerning a transfer scheme prior to January 3, 1946, the undersigned finds that it is not responsible for any of the unfair labor practices committed before that date. He further concludes and finds, however, that respondents are responsible and liable for any unfair labor practices committed by either on or after January 3, 1946, for it is obvious that the activities of the respondents since that time are so related and intermingled that findings and an order directed solely against the corporation respondent would be neither accurate, nor afford an effective remedy.

c. Conclusions with respect to the refusal to bargain.

Clearly on the basis of the facts above, the respondents at all times on and after January 3, 1946, refused to bargain with the CIO, the designated

²⁹Cf. Matter of Norwich Dairy Company, Inc., and Vermont Dairy Company, Inc., 25 N.L.R.B. 1166.

³⁰Cf. N.L.R.B. vs. Kiddie Kover Mfg. Co., 105 F (2d) 179 (C.C.A. 6).

representative of the production and maintenance employees in an appropriate unit, as found above. Not only did the corporation respondent invite unauthorized employees to attend a bargaining conference with CIO held on that date, which in itself clearly indicates a refusal to bargain,³¹ and later the corporation respondent, although specifically requested to submit counter-proposals to the demands of the CIO, at all times thereafter, refused and neglected to do so. Of course, contemporaneous bargaining with the A. F. of L. with respect to the employees in the appropriate unit in itself constituted a refusal to bargain with the CIO.

Furthermore, as shown above, the respondents availed themselves of the opportunity presented to use the January 3 meeting as a sounding board to announce the scheme to shift over the plant operations to the partnership respondent. In view of O'Keefe's November 27, 1945, speech to the employees, discussed previously above, the announcement made at the meeting clearly was made with the purpose and intent of notifying the employees that they were to be given another opportunity to select the A. F. of L. as exclusive bargaining representative. Following the announcement, the partnership respondent proceeded to negotiate a union-shop contract with the A. F. of L. and IAM group, as more particularly discussed below, before the

³¹Cf. Matter of Lennox Furnace Co., Inc., 20 N.L.R.B. 962; Matter of Joseph Blackburn Products Corporation, 21 N.L.R.B. 1240.

deal to transfer the plant operations was fully worked out and closed.

The record shows that the partnership respondent had about 15 production employees on its payroll from November 20, 1945, the date of the consent election in the plant, until January 31, 1946, when the transfer of operations and personnel was effected. The terms of the lease agreement between the corporation and the partnership precludes the latter from engaging, on the leased premises, without express permission from the corporation, in any manufacturing operations other than those customarily performed by the corporation. Hence, the undersigned finds that the 15 partnership employees of necessity have been absorbed in production and maintenance work now being jointly conducted in the plant by both of the respondents. Thus, the 15 are no longer a separate and identifiable group and properly form a part of the production and maintenance unit which has been found to be appropriate. Due to the small number involved, the votes of the 15 could not have affected the results of the consent election or rendered it inconclusive. But whether or not the 15 partnership employees now form a part of the appropriate unit does not affect a finding that the respondents have refused to bargain. There was no specific request made of the partnership respondent, as such, to bargain collectively with the CIO but such demand had been made on the corporation respondent, and is deemed, for the purposes of this proceeding, to constitute a continuing demand on the corporation,

which is conducting the same business in the same plant with the same personnel as the "Pioneer Electric Company."³² Further, the scheme of transferring operations and personnel was motivated by a determination to avoid bargaining with the CIO. Since the partnership entered in the union-shop contract at about the same time as the 300 former employees of the corporation were transferred to it, it is obvious that a formal request to bargain concerning them would have been merely an idle gesture pending the setting aside of the union-shop contract found below to be invalid. Upon the basis of the foregoing facts and the entire record, the undersigned finds that on January 3, 1946, and at all times material thereafter, the respondents have failed and refused to bargain collectively with the duly designated majority representative of their employees in an appropriate unit, thereby interfering with, restraining, and coercing the employees in the exercise of the rights guaranteed in Section 7 of the Act.

D. The invalid closed shop contract.

On some occasion between November 27, 1945, and February 1, 1946, the respective dates of O'Keefe's second and third speeches to the employees, Collins delivered a similar speech to them at a meeting held at the plant during business hours. Collins, on this

³²Cf. Matter of Norwich Dairy Company, Inc., and Vermont Dairy Company, Inc., 25 N.L.R.B. 1166.

occasion, stated in substance: when Mr. O'Keefe outlined the company's position to them a short time ago, he explained to them that while he was not trying to sell either union, he felt that the A. F. of L. was the better choice, because a larger market for the sale of products would be opened up if they were working under an A. F. of L. agreement; that he (Collins) had been bargaining in good faith with the CIO and offered to pay the highest rates paid in the stove industry in the area;³³ and that although the company was willing to do everything possible to maintain peaceful labor conditions at the plant, none of its employees would be forced into joining any union.³⁴

The partnership respondent was first brought into the picture on January 3, 1946. The bargaining conference held on that day between the corporation respondent and the CIO, was selected as a sounding board to announce to a group of employees invited to attend by the corporation that plans were under way to transfer all manufacturing operations to the partnership, and that when this deal was consummated there would be few employees left

³³Obviously, Collins' speech was delivered sometime after December 15, 1945, the date of the first bargaining conference.

³⁴He was obviously telling them that a union-shop contract would not be signed with the CIO, their certified representative, yet a few weeks later a union-shop contract was signed with the craft unions absent a clear showing of majority representation.

on the pay-roll for the CIO to bargain for. Clearly in view of the background of past unfair labor practices, as found above, this was but another request to the employees to join the A. F. of L.

Shortly thereafter, in January, 1946, bargaining conferences between the partnership company and the craft union commenced. Wilbur Durant, the managing partner of the partnership, testified that he delegated authority to Collins,³⁵ sometime during January, 1946, to negotiate an agreement between the partnership and the craft unions covering all production employees at the plant;³⁶ that, at the time, he (Durant) knew that the CIO previously had been certified as the majority representative of the corporation employees; that following such bargaining conferences between Collins and the craft union representatives, he and Collins met with the craft union representatives at Durant's office on January 31, 1946,³⁷ and in about 5 minutes the union-shop contract was signed by all parties; and that prior to signing the contract no proof had

³⁵Collins, the attorney of record for respondents, was also their labor relations advisor.

³⁶At the time these negotiations were going on the partnership had only 15 production employees on its pay-roll. Durant further testified that about 300 of the corporation's production employees were transferred over to its pay-roll. This group of 300 constituted about 90 per cent of all employees in the unit covered by the CIO's certification.

³⁷It is noted that the contract also bears the date of January 2, 1946, as the purported date of execution, as did the transfer agreement above mentioned.

been required of the Unions to show that they, in fact, represented a majority of the employees involved, because he had been assured by some of the older employees of the corporation that the A. F. of L. had signed up a majority and accepted the statements as true.

The craft unions offered no proof respecting their designations as bargaining agents at the hearing, nor does the record contain any evidence regarding the bargaining negotiations between the partnership company and the unions, parties to the contract, other than that appearing in Durant's above testimony.

In respect to this issue, the Painters interposed a special defense, namely, that because the records fail to show that it specifically participated as a party in the November 20, 1945, consent election, it was not bound by the designation of the CIO as a result of those proceedings, and that consequently any evidence herein is not binding on it. The undersigned finds no merit in this contention. The record shows that the names of four employees classified as painters appeared on the eligible list of voters used at the consent election, that these four employees voted and the votes were not challenged, and that since the Los Angeles Metal Trade Council, A. F. of L., was named on the ballot to protect and conserve the interests of A. F. of L. organizations who might have a then present interest of representation on behalf of any employees, any rights of the painters at the time were duly protected.

Conclusions

The contract was the culmination of a design on the part of the respondents to select the A. F. of L. as the exclusive representative of their employees as a means of circumventing its obligation to bargain collectively with the CIO as the majority representative of the employees in an appropriate unit. In its persistent efforts to thwart the self-organization of its employees, the corporation respondent after its failure to accomplish the defeat of the CIO at the election enlisted the aid of the partnership to join with it in further attempts to induce the employees to select the A. F. of L. as their exclusive representative. Clearly, in view of the background of past unfair labor practices, as found above, the announcement made at the January 3, 1946, bargaining conference can be considered only as an effort to destroy the CIO and to bring home to the minds of the employees that they would soon be given another opportunity to select the A. F. of L. as their bargaining agent. Strong support for this last conclusion is evidenced by the unusual conduct of the partnership in proceeding to recognize the craft unions as bargaining representative of some 300 workers not yet on its payroll, concerning whom no evidence of majority representation had been submitted by the craft unions, and who already had selected the CIO to represent them.

Assuming that the craft unions could have proved a majority at the time the contract was entered into, such majority must be deemed vitiated by the

interference of the respondents in connection with the solicitation of such membership. At no time material did the craft unions represent an uncoerced majority of the employees in the plant. The contract was made with labor organizations which were assisted by unfair labor practices.

Accordingly the undersigned finds that by persuading and inducing their employees to join the craft unions, the respondents interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

E. The alleged attempts of the respondents to bribe CIO representatives

The complaint as amended alleges, in substance, and the answer denies that the respondents interfered with the rights of the employees to self-organization by attempting by offers of payment of money and other inducements to influence and persuade John A. Despol and G. J. Conway, representatives of the CIO, to surrender the CIO's position as duly designated exclusive bargaining representative of the employees, and to discontinue further activity on behalf of the CIO.

Despol, the CIO representative at all bargaining conferences held, testified on direct-examination that at two conversations held with Collins at a restaurant and cocktail bar in Los Angeles, on January 25 and February 1, 1946, that Collins told him during the first conversation, that he would

give Despol \$1000 from his legal fees in the case if he would consent to the holding of another consent election among the employees and cease all CIO activities at the plant, because the company was obligated to enter into a contract with the A. F. of L. in order to avoid the boycotting of its products; that, he, Despol told Collins he could not make such a deal; that at the second meeting at the same place, on which occasion Conway was present with Despol, Collins made substantially the same offer to both Despol and Conway, and later on this occasion, raised his offer to \$1500; and that on February 4 Collins called Despol on the telephone and renewed the offer.³⁸

During his cross-examination, Despol, in substance, admitted that his personal relations with Collins had been friendly over a period of several years, that they had frequently gone into a bar together to indulge in alcoholic stimulants, that even during the present hearing they had taken some friendly drinks together following the end of the days session on several occasions. On rebuttal, Despol denied that prior to January 25, 1946, Collins had ever broached the subject regarding the transfer of operations to the partnership, or had previously stated that another election would probably result in a change of representatives. The un-

³⁸It is noted that Despol also testified that on the second meeting at the bar when Despol asked Collins how much President O'Keefe would "kick in," Collins shook his head indicating that O'Keefe was not involved in the alleged transaction.

dersigned concluded, as found above, that Collins and Despol participated in a similar conversation during the January 3, 1946, bargaining conference in the presence of several employees who had been invited to attend the meeting by Collins, thereby discrediting, at least in part, Despol's above testimony. Collins gave no testimony at the hearing.

On the basis of the foregoing facts and the entire record the undersigned deems that Despol's version of the above incidents have been overly emphasized and exaggerated. It is inconceivable to the undersigned that if Despol entertained a sincere conviction that Collins had offered him a bribe to sell out the CIO, that Despol would continue his friendly relations with Collins to the extent of still going into cocktail bars with Collins. The undersigned finds that the allegation has not been sustained by the proof.

IV. The effect of the unfair labor practices upon commerce

The activities of the respondents and each of them as set forth in Section III above, occurring in connection with the operations of respondents described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. The remedy

Having found that the respondents have engaged in certain unfair labor practices affecting com-

merce, it will be recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

The respondents illegal conduct discloses a purpose to defeat self-organization among their employees motivated primarily by fear of an A. F. of L. boycott. For example, shortly after the election at the plant at which time the respondents learned that the CIO had been designated the majority representative of the production and maintenance employees, it was sought to coerce them in the exercise of the rights guaranteed under the Act by warning them, in effect, that unless they withdrew from affiliation with the CIO and affiliated with the A. F. of L. their economic welfare would be jeopardized. Thereafter, as a result of the scheme or plan adopted by the respondents which culminated in the transfer of the manufacturing operations in the plant from the corporation respondent to the partnership respondent, the respondents succeeded in inducing many of their employees to shift their union affiliation, thus circumventing the purposes of the Act. That the conduct of the respondents was motivated by fear of an A. F. of L. boycott is no justification for a violation of the Act.³⁹ Since the respondents' conduct in these respects interfered with, restrained, and coerced their employees in the exercise of the right to self-organization, to form, join, or assist labor organi-

³⁹See matter of Lake Shore Electric Mfg. Corp., et al., 66 N.L.R.B. No. 105.

zations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, this conduct violated Section 8 (1) of the Act quite apart from the respondents refusal to bargain with the CIO.

In connection with the procedures followed in carrying out the scheme to defeat self-organization among the employees, it is apparent that the membership of the craft unions involved herein was procured with the assistance of the respondents' unfair labor practices. Consequently, the craft unions' union-shop contract with the partnership is void and of no effect. The undersigned will therefore recommend that the respondents give no effect to it.

Having also found that the respondents have refused to bargain collectively with the CIO as the certified exclusive representative of all production and maintenance employees at the plant,⁴⁰ the un-

⁴⁰It is noted that the partnership for sometime prior to the November 20, 1945, election, until January 31, 1946, had only 15 production employees on its pay-roll, and that these employees were not included in the certified unit. However, since the partnership's pay-roll was expanded by the addition of 300 production employees on January 31 and, in the absence of any showing to the contrary, a fair inference arises that the 15 former employees on the partnership pay-roll would have substantially similar interests concerning rates of pay and working conditions as the transferred employees. The fact that the said 15 employees were not included in the certified unit does not affect the findings herein.

dersigned will recommend that respondents, upon request, bargain collectively with the CIO.⁴¹

Upon the basis of the foregoing findings and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, a co-partnership doing business as Pioneer Electric Company, are jointly employers of the employees here involved within the meaning of Section 2 (2) of the Act.
2. United Steel Workers of America, Stove Division, Local 1981, C.I.O.; Stove Mounters International Union of North America, Local 125, A. F. of L.; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, A. F. of L.; International Moulders and Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L.,

⁴¹See the Board's Supplemental Decision in Matter of Karp Metal Products Co., Inc., 51 N.L.R.B. 621; Frank Bros. Co. vs. N.L.R.B., 321 U.S. 702.

are all labor organizations within the meaning of Section 2 (5) of the Act.

3. By refusing on January 3, 1946, and at all times thereafter, to bargain with United Steelworkers of America, Stove Division, Local 1981, C.I.O., as the certified exclusive representative of its employees in the unit heretofore found to be appropriate, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case the undersigned recommends that the respondents, O'Keefe and Merritt Manufacturing Company, a corporation, and L. G. Mitchell, W. J. O'Keefe, and Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company, their officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Urging, persuading, warning or coercing its employees to join the Stove Mounters International Union of North America, Local 125, A. F. of L., International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, A. F. of L.; International Moulders & Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L., and from encouraging membership in any of the above named organizations, discouraging membership in United Steelworkers of America, C.I.O., or any other labor organization of their employees;

(b) Recognizing the A. F. of L. labor organizations and the I.A.M. named in the preceding paragraph, 1 (a), of these Recommendations, or any of them, as the exclusive representative of their employees for the purposes of collective bargaining unless and until said organizations, or any of them shall be certified by the National Labor Relations Board as the exclusive representative of such employees;

(c) Giving effect to the union-shop dated January 2, 1946, and signed on January 31, 1946, with the said labor organization named above in paragraph 1 (b) of these Recommendations, or any

modification, extension, supplement, or renewal thereof, or to any superseding or like agreement with them;

(d) Refusing to bargain collectively with United Steelworkers of America, Stove Division, Local 1981, C.I.O., as the exclusive representative of all production and maintenance employees at the Los Angeles plant of the respondents within the above found appropriate unit, with respect to rates of pay, wages, hours of employment and other conditions of employment.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from the Stove Mounters International Union of North America, Local 125, A. F. of L., International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, A. F. of L.; International Moulders & Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paper-hangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L., as the exclusive representatives of their employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions

of employment, unless and until the said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representatives of such employees;

(b) Bargain collectively upon request with the United Steelworkers of America, Stove Division, Local 1981, C.I.O., as exclusive representatives of all production and maintenance employees at the Los Angeles plant of the respondents within the above found appropriate unit, with respect to rates of pay, wages, hours of employment and other conditions of employment; and if an understanding is reached, embody such understanding in a signed agreement;

(c) Post at the respondents' plant at Los Angeles, California, copies of the notice attached hereto, marked "Appendix A." Copies of the said notice to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the respondents' representatives, be posted by the respondents immediately upon receipt thereof, and maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents to insure that said notices are not altered, defaced, or covered by other material;

(d) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the receipt of this Erratum to the Intermediate Re-

port what steps the respondents have taken to comply therewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Erratum to the Intermediate Report, respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring respondents to take the action aforesaid.

The undersigned further recommends that the complaint be dismissed insofar as it alleges that the respondents violated the Act by attempting by offers of payment of money to influence representatives of the CIO to surrender the CIO's position as the exclusive bargaining representative of the employees, and to discontinue further activity on behalf of the CIO.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 27, 1945, any party or counsel for the Board may, within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing, setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four

copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board. Any party desiring to submit a brief in support of the Intermediate Report shall do so within fifteen (15) days from the date of the entry of the order transferring the case to the Board, by filing with the Board an original and four copies thereof, and by immediately serving a copy thereof upon each of the other parties and the Regional Director.

Dated at Washington, D. C., this 4th day of June 1946.

/s/ HENRY J. KENT,
Trial Examiner.

APPENDIX A NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a trial examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will bargain collectively upon request with the United Steelworkers of America, Stove Division, Local 1981, C.I.O., as exclusive representative of all the employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is: All production and maintenance employees at the Los Angeles plant of the respondents excluding office clerical employees; guards; parcel post clerks; draftsmen; timekeepers; material expeditors; pattern makers and pattern maker helpers other than those working in sheet metal; experimental laboratory workers; and supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action.

We will not recognize the Stove Mounters International Union of North America, Local 125, A. F. of L., International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, A. F. of L.; International Moulders and Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L., as

the exclusive representative of any of our employees for the purpose of collective bargaining, or give effect to the contracts now existing with said organizations, unless and until said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representatives of our employees.

We will not urge, persuade, warn or coerce our employees to join any of the A. F. of L. unions above-named, and we will not discourage membership in United Steelworkers of America, C.I.O., or any other labor organization, or encourage membership in any of the above-named A. F. of L. unions, or any other labor organization.

All our employees are free to become or remain members of United Steelworkers of America, C.I.O., or any other labor organization.

O'KEEFE & MERRIT MANUFACTURING CO.,
Employer.

PIONEER ELECTRIC
COMPANY,
Employer.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

**ORDER TRANSFERRING CASE TO THE
NATIONAL LABOR RELATIONS BOARD**

A hearing in the above-entitled case having been held before a duly designated Trial Examiner and the Intermediate Report of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington, D. C.

It is hereby ordered, pursuant to Article II, Section 32, of National Labor Relations Board Rules and Regulations—Series 3, as amended, that Case No. 21-C-2689 be, and hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., May 31, 1946.

By direction of the Board:

JOHN E. LAWYER,
Chief, Order Section.

[Affidavit of service by mail attached.]

[Title of Board and Cause.]

**REQUEST FOR PERMISSION TO ARGUE
ORALLY BEFORE THE BOARD**

To the National Labor Relations Board, Washington, D. C.:

Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor; International Moulders and Foundry Workers Union of North America, Local

374, affiliated with the American Federation of Labor; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, hereby request permission to argue orally before the Board their exceptions to the Intermediate Report filed by the Trial Examiner in the above entitled matter which said Intermediate Report is dated May 31, 1946, and also request permission to argue orally the matter of the approval of such report and the order of the Board to be made in this matter.

Dated in Los Angeles, California, this 6th day of June, 1946.

ARTHUR GARRETT,
JOHN L. HARRIS.

By /s/ JOHN L. HARRIS,
Attorneys for the Petitioning
Unions.

[Affidavit of service by mail attached.]

[Endorsed]: Filed June 10, 1946.

Telegram
Official Business—Government Rates
(Copy Copy Copy)

Am sending airmail exceptions to intermediate report of trial examiner in O'Keefe and Merritt Mfg. Co. and Pioneer Electric Co. and United Steel Workers of America Stove Division Local 1981 CIO et al case number 21-C-2689 request extension to

June 25 of time file brief in support of exceptions
Please wire collect.

ARTHUR GARRETT,
Attorney for Stove Mounters
Moulders and Carpenters.
455P

1981 CIO et al 21-C-2869 25 of Time.

United States of America
Before the National Labor Relations Board
Washington, D. C.

Case No. 21-C-2689

In the matter of
**O'KEEFE AND MERRITT MANUFACTURING
COMPANY, et al, etc.,**
and
**UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C.I.O.,**
et al., etc.

**EXCEPTIONS TO INTERMEDIATE REPORT
AND MOTION TO AMEND SAID REPORT**

The Respondents herein file their exceptions to the Intermediate Report of the Trial Examiner in the above matter, and moves that certain portions of said report be deleted, and that there be added to said Report certain additional matters, all as hereinafter appears (the Intermediate Report will hereinafter be referred to as the Report for brevity), to wit:

I.

The Respondents excepts to lines 19 and 20 on page 2 of said Report wherein the Trial Examiner states that copies of the complaint were served upon the Respondents and moves that the Report be amended to read that copies of the complaint were served upon certain of the Respondents.

II.

The Respondents except to line 25 on page 3 of said Report wherein it is stated that the Respondents were represented by counsel and participated in the hearing and moves that it be amended to state that certain of the respondents were represented by counsel only those who were properly served with process in accordance with the rules of the National Labor Relations Board and the procedural rules of the Federal Courts with reference to service of process.

III.

The Respondents except to lines 25 to 35 on page 5 of said Report and moves that said report be amended to show the actual cash investment of each of the partners, i.e., \$15,000.00 each, with the exception of Mr. Durant who invested \$30,000.00.

Respondents except to lines 24 to 30 on page 7 of said report and moves that said report be amended to show that the Pioneer Electric Company agreed to consent to a consent election and renewed the offer at the time of hearing (see offer of proof.)

IV.

The Respondents except to foot note 11 on page 7,

lines 38 of said report and move that the Report be amended to show that at the time the election took place the plant was going through a change over period and very few regular employees were on the pay roll, a large number of them being transitory day laborers. That the normal number of employees is approximately 600 to 800, less than 300 on pay-roll and voting.

V.

The Respondents except to lines 14 to 26, page 8 of said report and move that this matter be deleted and that the testimony of John Levasco be inserted instead, which testimony is a flat contradiction of the testimony of Spallino. Spallino on cross examination was shown to have testified falsely, was biased and according to his own testimony that although he was ostensibly working for the A. F. of L. he was not doing so good in faith. Respondents moves that the report be amended to read that Spallino's version cannot be accepted by reason of his bias and the fact that he is not a person to whose testimony any credibility can be given because he has shown by his conduct that he betrayed all of the A. F. of L. employees who were dependent upon him and trusted him to protect their interests in the election and for that matter in their organizing activities. That the witness Spallino could not remember when World War II started or when World War II ended but that he had an excellent memory for fine details that were helpful to his side of the controversy.

Respondents move that line 29 to 42 on page 8 be deleted and that the condensed testimony of Mr. Levasco be substituted for the same reasons as set forth above. There is no showing that the said Levasco had any interest in the proceeding other than to testify as to the truth; that he is a more credible witness.

The Respondents except to lines 45 to 65 on page 9 and lines 1 to 24 on page 10 of said report for reason that the conclusions drawn are based entirely upon the testimony of Spallino, a witness to whom no credit should be given by reason of the fact that he was biased, prejudiced and faithless to his trust and moves that the conclusion should be that the company adopted a hands off policy, permitted both sides to make speeches and organize fully within the plant and elsewhere. That both the A. F. of L. and CIO were making speeches and that both were accorded equal facilitation to make speeches both outside and within the plant. That anyone who wanted to talk or call a meeting was accorded that privilege.

Respondents except to lines 1 to 20 of page 11 of said report and move that said lines be deleted and the following be substituted in its place:

That nothing in any speech of Mr. O'Keefe's or Mr. Collins was of a threatening or coercive nature, that the employees would not be able to decide the issues fairly without an expression of opinion from all parties affected. That Mr. O'Keefe and Mr. Collins had a constitutional right to make a fair analysis of the situation and no inference of a plan

to illegally interfere with the CIO's organizing drive can or should be drawn from these speeches. That the speeches did not constitute a pattern which was followed to exclude the CIO; that a legal right exists to speak and a legal right exists to make leases, contracts, etc. That the exercise of legal rights can not be so construed as to make their results illegal.

VI.

The Respondents except to lines 28 to 30 of page 12 of said report and move that the said lines be deleted and the following be substituted that Spalino, a trusted watcher for the A. F. of L. was secretly cheating the A. F. of L. and assisting the CIO, a great breach of trust and faith.

Respondents further except to lines 31 to 50 of said report and move that the same be deleted and that the Board find that the election was not a fair one, because the only watcher at the polls were CIO agents planted there in breach of faith.

VII

The Respondents except to lines 23 to 26, page 13 of said report and move that same be deleted and the report show that Levasco was asked to bring any employees who wanted to come to the meeting, either CIO or A. F. of L. because the CIO organizers were conducting secret negotiations.

Respondents except to lines 50, etc. page 13 and move that the following be added, that since Mr. Despol was put on notice in ample time he should have asked either for a cross check or a consent

election to determine whether or not the majority of the employees of the Pioneer Electric Co. as of that date, i.e., sometime in January or February of 1946, wanted the CIO and whether he represented a majority of the employees of the Pioneer Electric Company. Respondents move that the following be added to line 26 on page 14 of said report:

that although Despol knew that a transfer of employees was to be made to Pioneer sometime in November of 1945 and that they were actually transferred in January of 1946, he made no request to bargain for employees of Pioneer Electric Company nor did he request a check off or election at any time.

Respondents except to line 40, page 14 of said report and move that the expression "at the least" be deleted and in its place instead be inserted "at the most." Respondents move that the following be added to line 6 on page 15 of said report that other reasons for the transfer was that a plan had been under consideration for at least two years to turn over the manufacture of gas ranges to Mr. Durant. That this plan could only be put into effect when the war ended and ranges began to be manufactured again. That the range manufacturing began again when the lease was entered into that other reasons for the entering into the lease and the taking over by Pioneer were tax savings, OPA concessions and lower costs of production.

Respondents except to lines 23 to 30 of said report and move that the same be deleted and the following be inserted in its place instead: that the

O'Keefe & Merritt Co. wanted to have the gas ranges manufactured and know that it was necessary to maintain for its former employees all of the privileges that they held before the transfer, otherwise the employees would not have continued to work, that if the company had wanted to take an anti-CIO attitude that would merely cut out these benefits by making the transfer to the new company, that this is exactly what the CIO said the purpose of the transfer was, i.e., to cut wages; that the company also paid Christmas bonus despite claim of CIO that the company was trying to transfer to cut employee benefits.

Respondents except to lines 44 to 50 on page 15 and lines 1 and 2 on page 16 and move that said Report be deleted and the following inserted on the basis of the foregoing facts, the undersigned concludes that the employees did not receive contributions from both companies but merely received their wages and same working conditions from the new company, that the payment of back pay was to induce these employees to keep working and to compensate them for the loss of pay they incurred by reason of the CIO's refusal to accept the pay increase offered on the first of January of 1946, which pay rate was approximately 20% higher than any other stove manufacturer on the West Coast and more than similar work in CIO shops.

Respondents except to lines 4 to 34 on page 16 and move that they be deleted and the following be inserted:

That the corporation did not assist either union but stated that "both Unions were probably bad," that the Pioneer Electric Company and the O'Keefe & Merritt Company are separate legal entities, one of whom manufactures an article and the other after paying for it, sells, delivers, installs and services the article. That the CIO had ample prior knowledge of the proposed transfer that it was a matter of common knowledge for years but that it was specifically brought to the attention of the CIO in a public speech in 1945, that despite this notice, no demand was made on the Pioneer for bargaining rights. That the CIO refused an election even after Pioneer agreed to consent to an election.

Respondents except to the conclusions in their entirety set forth on lines 1 to 50 on page 17 and move that the conclusion reached show that any group of employees who cared to listen had a legal right to listen to negotiations which were being made in their behalf, the same as any principal would have the right to observe the actions of its agents. That the respondent O'Keefe & Merritt Company bargained with the CIO in good faith and that the CIO did not request the Pioneer to bargain at all. That the O'Keefe & Merritt Company leased its facilities to the Pioneer Electric Company for the reasons herein before enumerated, namely, tax savings, OPA concessions, lower operating costs, prior agreement entered into with Mr. Durant at least two years before any CIO activities.

Respondents move that the following be added to line 9 on page 18 of said report:

That said statement was made to the employees of O'Keefe & Merritt and not to employees of Pioneer Electric Company. That the agreement with the Pioneer Electric Company subsequently entered into was entered into when conditions were entirely different, i.e., that the vast majority of Pioneer's Employees were in the A. F. of L.

Respondents move that lines 10 to 20 of page 18 of said report be deleted and the following be inserted:

that the intent to transfer the manufacture of gas ranges as soon as permitted was to be done by Pioneer Electric Company and had been in contemplation for two years prior to any CIO activities.

Respondents move that the following be added to line 35, page 18 of said report; no more proof was made in view of the fact that despite prior knowledge no demand was made by the CIO to bargain for the employees of Pioneer.

Respondents move that the following be added to line 41 on page 18, the evidence shows no demand was made by the CIO on Pioneer despite prior knowledge of the transfer and that the Pioneer Electric Company has offered to submit to an election or check off.

VIII.

Respondents except to the entire conclusion set

forth in said report beginning on page 19 at line 5, and to the remedies set forth on page 21 at line 11 and to the conclusions of law set forth on page 22 at line 9 and to the recommendations beginning on page 22 at line 45 and continuing to the end of said report and in their place and stead move the following be inserted:

That the Pioneer Electric Company is a separate legal entity that no demand has been made for bargaining rights at Pioneer and until an election is requested and won by CIO, that the Pioneer Electric Company continue its contract with the various A. F. of L. locals in full force and effect. That with respect to the O'Keefe & Merritt Company, this respondent has bargained with the CIO in good faith and has offered to continue to do so, that the complaint of the CIO union should be dismissed without prejudice.

Respectfully submitted,

/s/ CECIL W. COLLINS,
Attorney for Respondents.

[Title of Board and Cause.]

REQUEST FOR PERMISSION TO ARGUE
ORALLY BEFORE THE BOARD

To the National Labor Relations Board, Washington, D. C.:

The O'Keefe & Merritt Manufacturing Company, and Pioneer Electric Company, respondents, hereby request permission to argue orally before the Board their exceptions to the Intermediate Report filed by the Trial Examiner in the above entitled matter which said Intermediate Report is dated May 31, 1946, and also request permission to argue orally the matter of the approval of such report and the order of the Board to be made in this matter.

Dated in Los Angeles, California, this 8th day of June, 1946.

/s/ CECIL W. COLLINS,
Attorney for Respondents.

[Exceptions to Intermediate Report set forth above, pages 122 to 131.]

[Affidavit of service by mail attached.]

[Title of Board and Cause.]

EXCEPTIONS OF STOVE MOUNTERS IN-
INTERNATIONAL UNION OF NORTH
AMERICA, LOCAL 125, AFFILIATED
WITH THE AMERICAN FEDERATION
OF LABOR; INTERNATIONAL MOULD-
ERS AND FOUNDRY WORKERS UNION
OF NORTH AMERICA, LOCAL 374, AF-
FILIATED WITH THE AMERICAN FED-
ERATION OF LABOR AND LOS ANGE-
LES COUNTY DISTRICT COUNCIL OF
CARPENTERS, UNITED BROTHER-
HOOD OF CARPENTERS AND JOINERS
OF AMERICA, AFFILIATED WITH THE
AMERICAN FEDERATION OF LABOR,
TO THE INTERMEDIATE REPORT AND
TO THE RULINGS OF THE TRIAL EX-
AMINER

Come now Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor, hereinafter called the Stove Mounters; International Moulders and Foundry Workers Union of North America, Local No. 374, affiliated with the American Federation of Labor, hereinafter called the Moulders; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, hereinafter called the Carpenters, and except to the Intermediate Report dated May 31, 1946, of Trial Examiner Henry J. Kent, Esq., on

file herein, to the following mentioned portions of the record, and to the following rulings of the Trial Examiner upon motions and objections as follows:

I.

The Trial Examiner committed prejudicial error in denying the motion of the Stove Mounters, the Moulders, and the Carpenters, for a continuance of the hearing before said Trial Examiner of at least thirty days, made on the ground that they had not had adequate notice of the proceedings, nor adequate time to prepare for the said hearing, and that a denial to them of adequate notice and adequate time to prepare constituted a denial of due process of law and an unwarrantable interference with the obligations of their contract involved in this proceeding.

II.

That the Trial Examiner committed prejudicial error on proceeding with the hearing of this matter when none of the above named Labor Organizations had been given adequate notice of these proceedings, or adequate time within which to prepare for said hearing.

III.

That the Trial Examiner committed prejudicial error in assuming jurisdiction to avoid a contract because of a consent election when none of the parties to the said contract were parties to the proceeding in which the consent was held, or signed the agreement for the said consent election.

IV.

The findings of fact by the Trial Examiner are not supported by the evidence.

V.

The conclusions of the Trial Examiner are not supported by the evidence.

VI.

The conclusions of the Trial Examiner are not supported by the findings of fact.

VII.

The recommendations of the Trial Examiner are without and in excess of the jurisdiction of the Trial Examiner and of the National Labor Relations Board.

VIII.

The recommendations of the Trial Examiner are not warranted by the law, or the evidence.

IX.

The Trial Examiner committed prejudicial error in basing his findings, his conclusions, and his recommendations, in part, upon a so-called consent election held on November 20, 1945, upon an agreement signed by the CIO and purported to have been signed by one H. B. McMurry, a representative of the IAM purportedly on behalf of the Los Angeles Metal Trades Council, A. F. of L., when in truth and in fact the IAM is not an affiliate of the A. F. of L. the record does not show that either the said McMurry; or the IAM, had authority to sign said consent agreement on behalf of the said Metal

Trades Council, and the record does not show that the said Metal Trades Council had authority to act for or on behalf of any of the three above named Labor Organizations, on behalf of which these exceptions are made.

X.

The evidence does not support the finding of the Trial Examiner that the respondent corporation and the respondent partnership are engaged jointly in conducting a single business enterprise.

XI.

The evidence is insufficient to support the finding of the Trial Examiner that the partnership respondent rendered material assistance to the craft unions by joining in any scheme to divide up the operation of the corporation respondent's business in order to circumvent self-organization of the employees.

XII.

The evidence is insufficient to support the finding of the Trial Examiner that the partnership respondent proceeded to negotiate a collective bargaining agreement covering a group of employees, despite prior knowledge that they had previously designated the CIO as their representative.

XIII.

The evidence is insufficient to support the finding of the Trial Examiner that any of the employees of the partnership respondent ever designated the CIO as their bargaining representative as such employees.

XIV.

The evidence is insufficient to support the finding of the Trial Examiner "since the certification, as noted above, had been made on November 28, 1945, it certainly continued in full force and effect until January 31, 1946, when the union shop contract was signed with the craft unions." This finding overlooks the fact that the certification was for the corporation and that the contract was signed by the partnership.

XV.

The evidence is insufficient to support the findings of the Trial Examiner that the transfer to the partnership respondent of part of the plant operations of the corporation respondent was "a scheme rigged with the purpose and intent of setting aside the certification of a collective bargaining representative selected as the result of a self-organization by employees."

XVI.

Neither the law, nor the evidence, are sufficient to support the following statement in the Intermediate Report of the Trial Examiner, which statement is part finding and part conclusion:

"It would be implausible to find that the transfer of part of his plant operations by an employer subject to restraint under the act relieved transferees with knowledge of his burdens."

XVII.

The evidence is insufficient to support the finding of the Trial Examiner that the execution by the

partnership of the collective bargaining contract with the craft unions was an unfair labor practice or constituted a refusal on the part of the corporation respondent to bargain with the CIO.

XVIII.

The evidence is insufficient to support the finding of the Trial Examiner that "the fifteen partnership employees of necessity have been absorbed in production and maintenance work now being jointly conducted in the plant by both of the respondents. Thus, the fifteen are no longer a separate and identifiable group and properly form a part of the production and maintenance unit which has been found to be appropriate."

XIX.

The evidence does not support the finding of the Trial Examiner that the demand upon the corporation respondent to bargain collectively with the C.I.O. "is deemed for the purposes of this proceeding to constitute a continuing demand on the corporation which is conducting the same business in the same plant with the same personnel as the 'Pioneer Electric Company.' "

XX.

The evidence is insufficient to support the finding of the Trial Examiner that "the scheme of transferring operations and personnel was motivated by a determination to avoid bargaining with the CIO."

XXI.

The evidence is insufficient to support the finding of the Trial Examiner that "on January 3, 1946,

and at all times material thereafter, the respondents have failed and refused to bargain collectively with the duly designated majority representative of their employees in an appropriate union."

XXII.

The evidence is insufficient to support the findings of the Trial Examiner that "since the Los Angeles Metal Trades Council, A. F. of L., was named on the ballot to protect and conserve the interest of A. F. of L. organizations who might have a then present interest of representation on behalf of any employees, any rights of the Painters at the time were duly protected."

XXIII.

Neither the evidence, nor the law, are sufficient to support the following conclusion of the Trial Examiner:

"The contract was the culmination of a design on the part of the respondents to select the A. F. of L. as the exclusive representative of their employees as a means of circumventing its obligation to bargain collectively with the CIO as the majority representative of the employees in an appropriate unit. In its persistent efforts to thwart the self-organization of its employees, the corporation respondent after its failure to accomplish the defeat of the CIO at the election enlisted the aid of the partnership to join with it in further attempts to induce the employees to select the A. F. of L. as their exclusive representative. Clearly, in view

of the background of past unfair labor practices, as found above, the announcement made at the January 3, 1946, bargaining conference can be considered only as an effort to destroy the CIO and to bring home to the minds of the employees that they would soon be given another opportunity to select the A. F. of L. as their bargaining agent. Strong support for this last conclusion is evidenced by the unusual conduct of the partnership in proceeding to recognize the craft unions as bargaining representative of some 300 workers not yet on its payroll, concerning whom no evidence of majority representation had been submitted by the craft unions, and who already had selected the CIO to represent them."

XXIV.

Neither the law, nor the evidence, are sufficient to support the following conclusion of the Trial Examiner:

"Assuming that the craft unions could have proved a majority at the time the contract was entered into, such majority must be deemed vitiated by the interference of the respondents in connection with the solicitation of such membership. At no time material did the craft unions represent an uncoerced majority of the employees in the plant. The contract was made with labor organizations which were assisted by unfair labor practices."

XXV.

Neither the law, nor the evidence, are sufficient to support the following conclusion of the Trial Examiner:

"Accordingly the undersigned finds that by persuading and inducing their employees to join the craft unions, the respondents interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act."

XXVI.

Neither the evidence, nor the law, are sufficient to support the following statement in the Intermediate Report of the Trial Examiner, which statement is part finding and part conclusion:

"The respondents illegal conduct discloses a purpose to defeat self-organization among their employees motivated primarily by fear of an A. F. of L. boycott. For example, shortly after the election at the plant at which time the respondents learned that the CIO had been designated the majority representative of the production and maintenance employees, it was sought to coerce them in the exercise of the rights guaranteed under the Act by warning them, in effect, that unless they withdrew from affiliation with the CIO and affiliated with the A. F. of L. their economic welfare would be jeopardized. Thereafter, as a result of the scheme or plan adopted by the respondents which culminated in the transfer of the manu-

factoring operations in the plant from the corporation respondent to the partnership respondent, the respondents succeeded in inducing many of their employees to shift their union affiliations, thus circumventing the purposes of the Act. That the conduct of the respondents was motivated by fear of an A. F. of L. boycott is no justification for a violation of the Act.³⁹ Since the respondents' conduct in these respects interfered with, restrained, and coerced their employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, this conduct violated Section 8 (1) of the Act quite apart from the respondents refusal to bargain with the CIO."

XXVII.

Neither the evidence, nor the law, are sufficient to support the following statement of the Trial Examiner in his Intermediate Report, which statement is part finding and part conclusion:

"In connection with the procedures followed in carrying out the scheme to defeat self-organization among the employees, it is apparent that the membership of the craft unions involved herein was procured with the assistance of the respondents' unfair labor practices. Consequently, the craft unions' union-shop contract

with the partnership is void and of no effect. The undersigned will therefore recommend that the respondents give no effect to it."

The following conclusion of law is not supported either by the law, or the evidence:

"1. O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, a co-partnership doing business as Pioneer Electric Company, are jointly employers of the employees here involved within the meaning of Section 2 (2) of the Act."

The following conclusion of law is not supported either by the law, or the evidence:

"3. By refusing on January 3, 1946, and at all times thereafter to bargain with United Steelworkers of America, Stove Division, Local 1981, C.I.O., as the certified exclusive representative of its employees in the unit heretofore found to be appropriate, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (5) of the Act."

The following conclusion of law is not supported either by the law, or the evidence:

"4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging

in unfair labor practices within the meaning of Section 8 (1) of the Act."

The following conclusion of law is not supported either by the law, or the evidence:

"5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act."

XXVIII.

That the following recommendation is not warranted either by the law, or the evidence, and is without and in excess of the jurisdiction of the Trial Examiner and the National Labor Relations Board:

"(b) Recognizing the A. F. of L. labor organizations named in the preceding paragraph 1 (a) of these Recommendations, or any of them, as the exclusive representative of its employees for the purposes of collective bargaining unless and until said organizations, or any of them shall be certified by the National Labor Relations Board as the exclusive representative of such employees."

XXIX.

That the following recommendation is not warranted either by the law, or the evidence, and is without and in excess of the jurisdiction of the Trial Examiner and the National Labor Relations Board:

"(c) Giving effect to the union-shop contract dated January 2, 1946, and signed on January 31, 1946, with the said labor organizations named in Section 1 (a) of these Recommendations, or any modification, extension, supplement, or renewal thereof, or to any superseding or like agreement with them."

XXX.

That the following recommendation is not warranted either by the law, or the evidence, and is without and in excess of the jurisdiction of the Trial Examiner and the National Labor Relations Board:

"(d) Refusing to bargain collectively with United Steelworkers of America, Stove Division, Local 1981, C.I.O., as the exclusive representative of all production and maintenance employees at the Los Angeles plant of the respondents within the appropriate unit, with respect to rates of pay, wages, hours of employment and other conditions of employment."

XXXI.

That the following recommendation is not warranted either by the law, or the evidence, and is without and in excess of the jurisdiction of the Trial Examiner and the National Labor Relations Board:

"(a) Withdraw and withhold all recognition from the Stove Mounters International Union

of North America, Local 125, A. F. of L., International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, A. F. of L.; International Moulders & Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L., as the exclusive representative of its employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, unless and until the said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representative of such employees."

XXXII.

That the following recommendation is not warranted either by the law, or the evidence, and is without and in excess of the jurisdiction of the Trial Examiner and the National Labor Relations Board:

"It is further recommended that unless on or before ten (10) days from the date of service of this Intermediate Report, respondents notify said Regional Director in writing that they will comply with the foregoing recom-

mendations, the National Labor Relations Board issue an order requiring respondents to take the action aforesaid."

Respectfully submitted,

/s/ ARTHUR GARRETT,

Attorney for the Labor Organizations above mentioned.

[Affidavit of service by mail attached.]

[Endorsed]: Received June 18, 1946.

National Labor Relations Board
Collect

June 14, 1946

Arthur Garrett, Esquire
756 Broadway
Los Angeles, California

Re: O'Keefe and Merritt Manufacturing Company & Pioneer Electric Company, 21-C-2689, time for filing exceptions and briefs extended to June 21.

NATIONAL LABOR RELATIONS
BOARD.

jel:w

National Labor Relations Board

June 14, 1946

Cecil W. Collins, Esquire
3700 East Olympic Boulevard
Los Angeles, California

Katz, Gallagher & Margolis
Att: Milton S. Tyre, Esquire
111 West 7th Street
Los Angeles, California

National Labor Relations Board
Los Angeles, California

Re: O'Keefe and Merritt Manufacturing Company & Pioneer Electric Company, 21-C-2689, time for filing exceptions and briefs extended to June 21.

**NATIONAL LABOR RELATIONS
BOARD.**

jel:W

[Title of Board and Cause.]

**EXCEPTIONS OF BROTHERHOOD OF
PAINTERS, DECORATORS AND PAPER-
HANGERS OF AMERICA, LOCAL 792, AF-
FILIATED WITH THE AMERICAN FED-
ERATION OF LABOR, TO THE INTER-
MEDIATE REPORT AND TO THE RUL-
INGS OF THE TRIAL EXAMINER**

To the Chairman and Members of the National Labor Relations Board:

Comes now Brotherhood of Painters, Decorators

and Paperhangers of America, Local 792, affiliated with the American Federation of Labor, hereinafter called the "Painters," and excepts to the Intermediate Report dated May 31, 1946, of Trial Examiner Henry J. Kent, Esquire, on file herein, to the portions of the record and to the rulings of the Trial Examiner upon motions and objections as follows:

I.

That the Trial Examiner erred prejudicially in refusing to grant the Painters herein adequate time within which to prepare for said hearing, particularly since the Painters were brought into the matter subsequently and did not have adequate notice of the proceedings.

II.

The Trial Examiner committed prejudicial error in denying the motions made in behalf of Painters Local 792 to strike the testimony in the presentation of the Board's case wherein any such testimony attempted to affect or bind Painters Local 792, and denying the motions to dismiss Painters Local 792 as a party to the above proceedings, all of which motions were continuously made and blanket obligations were reserved by the Trial Examiner in behalf of said Painters Local 792. Such motions were based upon the facts that Painters Local 792 was not a proper party to the proceedings, had entered into a collective bargaining agreement with the partnership respondent in behalf of the four (4) painters who were members of Painters Local 792 at the time of said contract, and that Painters

Local 792 had no notice of, did not participate in, nor authorize anyone to participate in or represent them in the alleged consent election.

III.

That the Trial Examiner erred prejudicially and was without jurisdiction in attempting to void a contract because of a consent election when the parties to the contract were not parties to the proceeding in which the consent election was held and more importantly that the Painters herein were not parties in the proceedings in which the consent election was held, did not sign the agreement for said consent election, and did not authorize any individual, firm or group to sign said agreement for said consent election. There is a complete failure of the entire record to establish that the Painters herein participated in the consent election, authorized anyone to represent them in said election, had notice of such consent election, and as a result the Trial Examiner flagrantly erred in attempting to set aside a collective bargaining agreement between the Painters and the Pioneer Electric Company, a co-partnership.

IV.

The findings of fact by the Trial Examiner in respect to the Painters herein are not supported by any evidence.

V.

The Conclusions of the Trial Examiner in respect to the Painters herein were not supported by the evidence.

VI.

The conclusions of the Trial Examiner in respect to the Painters herein are not supported by the findings of fact.

VII.

The recommendations of the Trial Examiner in respect to the Painters herein are not only without and beyond the jurisdiction of the Trial Examiner and of the National Labor Relations Board, but are completely violative of the United States Constitution in their attempt to impair the obligation of contracts and to deny the members of Painters Local 792 collective bargaining representation without due process.

VIII.

The recommendations of the Trial Examiner in respect to the Painters herein are completely unwarranted by the law and by the evidence.

IX.

The Trial Examiner committed flagrant and prejudicial error in attempting to base his findings, his conclusions and his recommendations, in the greatest part, upon the alleged consent election held on November 20, 1945, and upon an agreement purportedly signed by the C.I.O. and by a certain H. B. McMurry, a representative of the I.A.M. and purportedly in behalf of the Los Angeles Metal Trades Council, A. F. of L., when in fact and unquestionably, and of which fact the Trial Examiner is fully informed, the I.A.M. is not an affiliate of the A. F. of L. and most importantly, in respect to the Paint-

ers herein, there is no evidence (in fact it is admitted by all the parties as pointed out during the proceedings) that at no time did anyone, including the said H. B. McMurry or I.A.M. or C.I.O. or the companies, have any authority whatsoever to enter into any consent election which could validly bind and affect Painters Local 792 and that in respect to Painters Local 792 said consent election is void and without any force and effect and the Trial Examiner's attempt to breathe validity therein is decidedly violative of the spirit and the letter of the National Labor Relations Act.

X.

While the Painters herein believe that the question of separate identity between the corporation respondent and the co-partnership respondent, is a legal matter to be resolved by the National Labor Relations Board and perhaps by a hearing of the court, a reading of the evidence clearly sets forth that there is no basis for the finding of the Trial Examiner that the corporation respondent and co-partnership respondent are engaged jointly in conducting a single business enterprise.

XI.

There is no evidence to support the finding of the Trial Examiner that the co-partnership respondent rendered material or any aid whatsoever to the crafts union of the Painters Local 792 by joining in any plan to divide up corporation respondent's business in order to avoid the self-organization of the employees.

XII.

In respect to the Painters, there is no evidence to support the Trial Examiner's finding that the partnership respondent proceeded to negotiate a collective bargaining agreement with the Painters (by inference that would be the conclusion of the Trial Examiner in attempting to impinge authority on the I.A.M. as representing the Painters, which is contrary to all the evidence), despite knowledge that such employees had previously designated the C.I.O. or their representative, when, as a matter of fact, the four Painters who participated designated the A. F. of L. Painters Local 792, and as a matter of fact Local 792 had no knowledge of the consent election, did not participate therein, nor authorize anyone to represent them.

XIII.

There is no evidence to support the finding of the Trial Examiner that any of the Painters of the partnership respondent ever designated the C.I.O. as their bargaining representative, but as a matter of fact the evidence is clear (Durant's testimony) that the Painters Local 792 had authorization cards designating said local as collective bargaining representative from all the four (4) painters involved.

XIV.

In respect to the Painters herein, there is no evidence to support the finding of the Trial Examiner which attempts to continue the full force and effect of the certification as applicable against the partnership since as a matter of fact the certifica-

tion was for the corporation and in said consent election there was no participation of the Painters herein or authorization given to anyone to represent said Painters and the collective bargaining contract between the partnership respondent and Painters Local 792 was signed by the partnership for and in behalf of the Painters who had designated Painters Local 792.

XV.

There is no evidence to support the finding of the Trial Examiner that the execution by the partnership of the collective bargaining contract with the Painters was an unfair labor practice or could be deemed to constitute a refusal on the part of the corporation respondent to bargain with the C.I.O.

XVI.

There is no evidence to support the finding of the Trial Examiner that "on January 3, 1946, and at all times material thereafter, the respondents have failed and refused to bargain collectively with the duly designated majority representative of their employees in an appropriate unit," when in fact the record discloses no evidence that C.I.O., during the times involved, represented any of the Painters and at no time during the proceeding was affirmative evidence introduced to establish that C.I.O. union represented any of the painters, and conversely evidence was introduced that at the time of the execution of the collective bargaining agreement between the partnership respondent and Painters Local 792, all of the Painters were members of Painters Local 792, A. F. of L.

XVII.

There is no evidence, and in this respect there is what might be considered a negligent avoidance of responsible judgment, that "since the Los Angeles Metal Trade Council, A. F. of L. was named on the ballot to protect and conserve the interests of A. F. of L. organizations who might have a then present interest of representation on behalf of any employees, any rights of the painters at the time were duly protected." Such a finding confounds not only law but common sense, for under the same token, every A. F. of L. union would be estopped from any further participation because at the same time a consent election was held between a then interested A. F. of L. group, admittedly not representing all of the A. F. of L. unions involved. The Trial Examiner knew and admitted to counsel that the Painters Local 792 was not then, nor is now, a member of the A. F. of L. Metal Trades Council. Accordingly, such finding must be reversed.

XVIII.

None of the findings, and no law, support the conclusion of the Trial Examiner:

"Upon all the foregoing, and upon the basis of the entire record, the undersigned finds that the respondent, by its entire course of conduct, including the sponsoring of the A. F. of L. activities of Spallino and Levasco among its employees on company time and property, the questioning of Spallino and Levasco, in the presence of Collins, by A. F. of L. representa-

tives regarding the union affiliations of the employees, O'Keefe's warning to the employees that their economic security depended upon the success of the A. F. of L. in the election and in permitting the holding of a pro-A. F. of L. meeting in the plant just prior to the opening of the polls, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

XIX.

No evidence, nor law, supports the conclusion of the Trial Examiner:

"As noted above, the Regional Director on November 28, 1945, issued his Consent Determination of Representatives, in the earlier representation proceeding²³ finding that, all production and maintenance employees employed at the Los Angeles plant of the company, excluding office clerical employees; guards; parcel post clerks; draftsmen; timekeepers; material expediters; pattern makers and pattern maker helpers other than those working in sheet metal experimental laboratory workers; and supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, pursuant to the terms of the consent election agreement previously entered

into on November 14, 1945. No objections were raised to the conduct of the ballot or to the determination of the Regional Director."

No evidence, nor law, supports such conclusion particularly in respect to the Painters herein since no unit could be carved involving the Painter without either participation by the Painters or authority given by them to some group or individual to represent them and there is no testimony of either such authority.

XX.

No evidence, or law, supports the conclusion of the Trial Examiner as to the appropriate unit and the union's majority representation therein, as set forth in Page 12 of his Intermediate Report. The Trial Examiner prejudicially erred in such conclusion, in failing to find specifically that all of the Painters were excluded from such unit since Painters Local 792 did not participate in such consent election or authorize anyone to represent them.

XXI.

No law or evidence support the following conclusion of the Trial Examiner:

"Assuming that the craft unions could have proved a majority at the time the contract was entered into, such majority must be deemed vitiated by the interference of the respondents in connection with the solicitation of such membership. At no time material did the craft unions represent an uncoerced majority of the employees in the plant. The contract was made

with labor organizations which were assisted by unfair labor practices.”

XXII.

Neither the law nor the evidence support at all the conclusion of the Trial Examiner that the closed shop contract between Painters Local 792 and the co-partnership respondent is invalid, as set forth in conclusion in the Intermediate Report:

“On some occasion between November 27, 1945 and February 1, 1946, the respective dates of O’Keefe’s second and third speeches to the employees, Collins delivered a similar speech to them at a meeting held at the plant during business hours. Collins, on this occasion, stated in substance: when Mr. O’Keefe outlined the company’s position to them a short time ago, he explained to them that while he was not trying to sell either union, he felt that the A. F. of L. was the better choice, because a larger market for the sale of products would be opened up if they were working under an A. F. of L. agreement; that he (Collins) had been bargaining in good faith with the CIO and offered to pay the highest rates paid in the stove industry in the area;³³and that although the company was willing to do everything possible to maintain peaceful labor conditions at the plant, none of its employees would be forced into joining any union.³⁴

“The partnership respondent was first brought into the picture on January 3, 1946.

The bargaining conference held on that day between the corporation respondent and the CIO, was selected as a sounding board to announce to a group of employees invited to attend by the corporation that plans were under way to transfer all manufacturing operations to the partnership, and that when this deal was consummated there would be few employees left on the payroll for the CIO to bargain for. Clearly in view of the background of past unfair labor practices, as found above, this was but another request to the employees to join the A. F. of L.

"Shortly thereafter, in January 1946, bargaining conferences between the partnership company and the craft union commenced. Wilbur Durant, the managing partner of the partnership, testified that he delegated authority to Collins,³⁶ sometime during January 1946, to negotiate an agreement between the partnership and the craft unions covering all production employees at the plant;³⁶ that, at the time, he (Durant) knew that the CIO previously had been certified as the majority representative of the corporation employees; that following such bargaining conferences between Collins and the craft union representatives, he and Collins met with the craft union representatives at Durant's office on January 31, 1946³⁷ and in about 5 minutes the union-shop contract was signed by all parties; and that prior to signing the contract no proof had been required

of the Unions to show that they, in fact, represented a majority of the employees involved, because he had been assured by some of the older employees of the corporation that the A. F. of L. had signed up a majority and accepted the statements as true."

XXIII.

There is no evidence of any kind or description, nor does the law in any respect support the conclusion of the Trial Examiner, as follows:

"The craft unions offered no proof respecting their designations as bargaining agents at the hearing, nor does the record contain any evidence regarding the bargaining negotiations between the partnership company and the unions, parties to the contract other than that appearing in Durant's above testimony.

"In respect to this issue, the Painters interposed a special defense, namely, that because the records fail to show that it specifically participated as a party in the November 20, 1945, consent election, it was not bound by the designation of the CIO as a result of those proceedings, and that consequently any evidence herein is not binding on it. The undersigned finds no merit in this contention. The record shows that the names of four employees classified as painters appeared on the eligible list of voters used at the consent election, that these four employees voted and the votes were not challenged, and that since the Los Angeles

Metal Trade Council, A. F. of L. was named on the ballot to protect and conserve the interests of A. F. of L. organizations who might have a then present interest of representation on behalf of any employees, any rights of the painters at the time were duly protected."

XXIV.

That the recommendation of the Trial Examiner, as set forth below, is not supported either by law or by evidence and is without and beyond the jurisdiction of the Trial Examiner and the National Labor Relations Board:

"Urging, persuading, warning or coercing its employees to join the Stove Mounters International Union of North America, Local 125, A. F. of L., International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, A. F. of L.; International Moulders & Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L., and from encouraging membership in any of the above named organizations, discouraging membership in United Steelworkers of America, CIO, or any other labor organization of its employees."

XXV.

That the recommendation of the Trial Examiner, as set forth below, is not supported either by law or by evidence and is without and beyond the jurisdiction of the Trial Examiner and the National Labor Relations Board:

“Recognizing the A. F. of L. labor organizations named in the preceding paragraph 1 (a) of these Recommendations, or any of them, as the exclusive representative of its employees for the purposes of collective bargaining unless and until said organizations, or any of them shall be certified by the National Labor Relations Board as the exclusive representative of such employees.”

XXVI.

That the recommendation of the Trial Examiner, as set forth below, is not supported either by law or by evidence and is without and beyond the jurisdiction of the Trial Examiner and the National Labor Relations Board:

“Giving effect to the union-shop contract dated January 2, 1946, and signed on January 31, 1946, with the said labor organizations named in Section 1 (a) of those Recommendations, or any modification, extension, supplement, or renewal thereof, or to any superseding or like agreement with them.”

XXVII.

That the recommendations of the Trial Examiner, as set forth below, is not supported either by law or

by evidence and is without and beyond the jurisdiction of the Trial Examiner and the National Labor Relations Board:

“Withdraw and withhold all recognition from the Stove Mounters International Union of North America, Local 125, A. F. of L., International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, A. F. of L.; International Moulders & Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L., as the exclusive representative of its employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, unless and until the said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representative of such employees.”

Respectfully submitted,

/s/ ALEXANDER H. SCHULLMAN,
Attorney for the Labor Organization above mentioned.

To the National Labor Relations Board:

Due to Counsel's absence from the city at the time of the receipt of Intermediate Report, Counsel was unable to request permission to argue orally before the Board, and at this time, with the gracious consent of the National Labor Relations Board, and of the parties herein, in behalf of Painters Local 792, Counsel requests permission to appear and argue the matter orally before said National Labor Relations Board.

Respectfully,

/s/ ALEXANDER H. SCHULLMAN,
Attorney for the Labor Organization above mentioned.

Dated: June 14, 1946.

[Affidavit of service by mail attached.]

[Endorsed]: Received June 20, 1946.

[Title of Board and Cause].

BRIEF IN SUPPORT OF EXCEPTIONS OF
UNITED STEELWORKERS OF AMERICA, STOVE DIVISION, LOCAL 1981, CIO
TO PORTION OF INTERMEDIATE REPORT AND TO RULINGS UPON CERTAIN OBJECTIONS.

We do not feel that it is necessary to divide this brief into those portions which support each of the three exceptions filed concurrently herewith by the Steelworkers. The three exceptions actually deal

with the same point. Paragraph 5-e of the Second Amended Complaint alleges that the respondent companies interfered with, restrained and coerced their employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively with the representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection by "attempting by offers of payment of money and other inducements to influence and persuade John A. Despol and G. J. Conway, representatives of the union, to surrender the union's position as duly designated exclusive bargaining representative of the employees, and to discontinue further activity on behalf of the union." It is the Trial Examiner's finding that the proof does not sustain this allegation to which the exception has been lodged by the Steelworkers. The Trial Examiner also overruled objections by the Steelworkers' counsel and by the Board's counsel to hearsay conversations intended to rebut the evidence concerning proof of this allegation. To this ruling also the Steelworkers have lodged an exception. This brief shall deal with those exceptions.

The Trial Examiner in his finding on this point at pages 19- fails completely to set forth the real evidence introduced in support of the allegation of bribery. There were two conversations between Collins and the union representatives at which the offer of bribe was made. Neither of these meetings was called at the request of the union representa-

tives. It is significant that the meetings were held at the express request of Mr. Collins, counsel for the company.

It is not true, as implied by the Trial Examiner's Intermediate Report, that Collins had conditioned his offer of \$1000 if the union would consent to the holding of another consent election. The record will clearly show that Despol was made an outright offer without any conditions. This was on the first meeting on January 25, 1946. It was only when Conway, the other union representative, asked Mr. Collins how the union could hope to keep face if it withdrew from the case that Mr. Collins then said that the union could file Charges with the Labor Board and let the case run itself out in that manner. In this way the union could not then be said to have sold out to the company.

The Trial Examiner says that the offer was to give \$1000 from Collins' legal fee. The record certainly does not clearly indicate that this was what was stated by Mr. Collins. However, even if this were so, this does not in any way detract from the fact that the offer of bribe was made. Whether the money to support that bribe would come from legal fees or from any other source is immaterial. The mere fact that money is to be given to the union in order that the union would withdraw its activity is sufficient to support a cease and desist order.

It is also important to note that the offer was renewed and raised at the second meeting between Collins, Despol and Conway. Again we must remember that this meeting was called at the request

of Mr. Collins. If the bribery was not intended as a bribe, why then would the offer have been raised from \$1000 to \$1500? Furthermore, why the meeting outside regular working hours, that is, at a cocktail bar, unless something was being said or done which was not usually done in the ordinary run of negotiations?

Not only was the original \$1000 offer made on January 25, 1946; not only was this offer renewed and raised to \$1500 on February 1, 1946; but the same offer was again renewed on the telephone when Mr. Collins telephoned to Mr. Despol on February 4, 1946.

The Trial Examiner apparently places great weight in ignoring these repeated offers of a bribe on the fact that Despol is supposed to have had friendly relations with Mr. Collins over a period of several years, and Despol and Collins had "Frequently gone into a bar together to indulge in alcoholic stimulants." The fact that Despol and Collins are on speaking relationships certainly does not support a finding that no offer of a bribe was made. Obviously, it is more likely that a bribe could be offered by Mr. Collins to Mr. Despol since they were on friendly terms. It is highly unlikely that Collins would offer a bribe to a stranger under these circumstances. That the bribe was offered by Collins to Despol and Conway during the course of drinking a cocktail also has nothing to do with the fact of the offer itself. Obviously the surroundings of a cocktail bar are much more conducive to off-the-cuff

dealings than the formality and rigidity of a lawyer's office.

As a matter of fact Despol and Collins had not been quite so friendly as the Trial Examiner would indicate by his Intermediate Report. Despol had known Collins for a period of several years, but it is not true that he had during that time on a number of occasions gone with Collins to a bar to "indulge in alcoholic stimulants."

The Trial Examiner would impeach Mr. Despol's testimony because of a slight inconsistency between his testimony and that of several A. F. L. members called by the company as its witnesses over certain conversations, having nothing to do with the bribe, which took place in Mr. Collins' office during the negotiations between the respondent companies and the Steelworkers. In the first place, these witnesses obviously are biased and prejudiced. Not only were they called by the company as company witnesses, but furthermore they are members of that labor organization whose contracts are sought to be set aside in this case by the CIO.

It is of the utmost significance that Mr. Collins himself feels that Mr. Despol's character is of the highest type. Mr. Collins himself admitted on one occasion during the hearing that it would not be necessary to excuse Mr. Despol from the hearing room during the course of an off-the-record discussion between counsel and the Trial Examiner since, as Mr. Collins himself stated on the record, Mr. Despol would unquestionably testify to the truth anyway. When the company's own counsel feels this way

about the testimony of Mr. Despol, certainly it does not lie in the mouth of the Trial Examiner to disregard the testimony of Mr. Despol.

Incidentally, the testimony of Despol and Conway concerning the conversations with Collins on January 25, February 1 and February 4, all in 1946, is totally unrebutted. Furthermore, the respondent companies stipulated with the union and with the Board that four other witnesses, if called to testify, would testify in the same manner and to the same extent that Despol and Conway testified concerning the conversation of February 1, 1946 at which time the \$1000 offer of a bribe was raised to \$1500. None of this testimony was rebutted either directly or even indirectly.

The one person who was in a position to offer any evidence contradictory of the union's evidence was Cecil Collins himself. How can the Trial Examiner or the Board disregard the fact that Cecil Collins, the man who is supposed to have offered the bribe, did not take the witness stand and did not testify at this hearing. Mr. Collins was present at all times during the hearing as counsel for the respondent companies. It would have been convenient for him to testify. He would have had to do nothing more than take the stand and testify as to actually what took place if he really felt that anything different than what Despol and Conway testified to did take place. As a matter of fact Mr. Collins did not even seek a stipulation from counsel at the hearing that if Mr. Collins would take the stand he would testify in a certain manner. Obviously this offer of a stipu-

lation could not be made, nor could Mr. Collins take the stand, for in truth and in fact, what Mr. Conway and Mr. Despol testified to was the actual truth.

The Trial Examiner says that "It is inconceivable to the undersigned that if Despol entertained a sincere conviction that Collins had offered a bribe to sell out the CIO, that Despol would continue his friendly relations with Collins to the extent of still going into cocktail bars with Collins." Can there be any question at all concerning Despol's sincere conviction on this point? After the offer had been made the first time, Despol apparently figured that it might have been made in jest or under circumstances not indicating that Mr. Collins was sincere. Therefore, when Collins again requested a meeting at the cocktail bar, Despol arranged to have Mr. Conway there with him, and also arrange to have four other witnesses present. If Mr. Despol did not entertain a "sincere conviction" that Collins was offering a bribe, of what need, then, for Despol to go to all the trouble of arranging to have witnesses present?

The fact that Despol continued to go into cocktail bars with Collins after the original offer was made certainly does not indicate that he was not sincerely convinced that the bribe was being made. On the contrary, it supports the view that Despol was sincere in that conviction. After the offer was made the first time, naturally Despol was willing to go to the cocktail bar the second time in order to have that offer renewed.

We believe that the record will show that Despol went into a cocktail bar only once with Mr. Collins during the course of the hearing. Again if Despol expected an offer of a bribe to be made during the hearing, certainly he had a right to attend such a meeting with Collins for that purpose. Had the offer of bribe been made at that time, Despol could then have returned to the witness stand and testified concerning the fourth renewed offer of the bribe.

In conclusion, it can be sincerely stated that the Trial Examiner's finding that there was no attempted offer of a bribe by Collins is totally unsupported by even a scintilla of evidence. The testimony concerning the several offers of bribe are detailed and clear. There is not one shred of evidence to rebut it. The very person who was present and who could deny the fact the bribe was made was present at the hearing throughout, and could have taken the witness stand and so testified. He did not.

Concerning the Trial Examiner's overruling of the objection to the testimony of W. J. O'Keefe concerning his conversations with Collins over Collins' conversations with Despol and Conway, certainly there can be no doubt that the Trial Examiner erred and erred prejudicially against the case of the Board and the Steelworkers. If Mr. Collins wished to put into evidence that he did not make the offer which he was supposed to have made, according to the testimony of six witnesses, then it would have been incumbent upon him to take the stand and so testify. It is obviously not only a violation of the rule against hearsay, but a violation which cannot

be permitted even in the informal proceedings conducted by the Board, to permit W. J. O'Keefe, an officer of one of the respondent companies and a stockholder in the other, to testify about what Mr. Collins had told him he had told to Mr. Despol. No one was present during this alleged conversation between W. J. O'Keefe and Collins except the two of them. On such a vital point as this, especially when the persons involved were present during the hearing, it was totally unnecessary to permit such testimony of a hearsay witness. Further, it was extremely prejudicial to the union's and Board cases.

Respectfully submitted,

KATZ, GALLAGHER &
MARGOLIS,

By /s/ MILTON S. TYRE,
Attorneys for United Steelworkers, Stove Division,
Local 1981, CIO.

[Affidavit of service by mail attached.]

[Endorsed]: Filed June 24, 1946.

[Title of Board and Cause.]

NOTICE OF HEARING

Please take notice that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Tuesday, July 30, 1946, at 10:30 a.m., or as soon thereafter as the Board may hear you, in the Hearing Room at 815 Connecticut Avenue Northwest, Washington, D. C., for the purpose of oral argument in the above-entitled matter. Argument will be limited to one-half hour for each party, and you are hereby advised that in view of the Board's docket no request for additional time made at the hearing will be granted.

You may appear and be heard if you so desire.

Should the party requesting oral argument decide not to appear, such party must immediately notify the Board and all other parties. This is necessary in order to avoid serious inconvenience and expense to other parties.

Dated, Washington, D. C., June 27, 1946.

EDWARD M. ROCHE,
Acting Chief, Order Section.

174 *National Labor Relations Board vs.*
 National Labor Relations Board
 Case No. 21-C-2689

July 30, 1946, 11:35 to 1:05.

Board Members Present: Mr. Herzog, Mr. Reilly,
Mr. Houston.

ORAL ARGUMENT

Name O'Keefe and Merritt (Pioneer Electric
Company).

Appearances:

A) Of Counsel to the Board:

Review Attorney: Miss Bliefeld

B) For the Company:

Mr. Cecil W. Collins, 3700 E. Olympic Blvd., Los
Angeles, California.

C) For the Union: United Steelworkers of Amer-
ica (CIO):

Mr. Frank Donner, 718 Jackson Place N. W.
Washington, D. C.

D) For the Intervenor: Stove Mounters Int'
Union of North America:

Mr. Wilson, 756 Broadway, Los Angeles, Califor-
nia.

United States of America
Before the National Labor Relations Board

Case No. 21-C-2689

In the Matter of
O'KEEFE AND MERRITT MANUFACTUR

ING COMPANY and L. G. MITCHELL, W. J. O'KEEFE, MARION JENKS, LEWIS M. BOYLE, ROBERT J. MERRITT, ROBERT J. MERRITT, JR., and WILBUR G. DURANT, individually and as co-partners, doing business as PIONEER ELECTRIC COMPANY

and

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, CIO,
and

STOVE MOUNTERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 125, affiliated with AMERICAN FEDERATION OF LABOR; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 389, affiliated with AMERICAN FEDERATION OF LABOR; INTERNATIONAL MOULDERS & FOUNDRY WORKERS UNION OF NORTH AMERICA, LOCAL No. 374, affiliated with AMERICAN FEDERATION OF LABOR; DISTRICT LODGE 94, for and on behalf of its affiliate LOCAL 311 of the INTERNATIONAL ASSOCIATION OF MACHINISTS; BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA, LOCAL 792, affiliated with AMERICAN FEDERATION OF LABOR; LOS ANGELES COUNTY DISTRICT COUNCIL OF CARPENTERS, UNITED

BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, affiliated with AMERICAN FEDERATION OF LABOR; and REFRIGERATOR FITTERS UNITED ASSOCIATION, LOCAL 508, affiliated with AMERICAN FEDERATION OF LABOR, parties to the contract.

Mr. Maurice J. Nicoson and Mr. Eugene M. Purver, for the Board. Mr. Cecil W. Collins, of Los Angeles, Calif., for the respondents. Katz, Gallagher & Margolis, by Mr. Milton S. Tyre of Los Angeles, Calif., for the CIO. Mr. Arthur Garrett and Mr. John Leo Harris, of Los Angeles, Calif., for the Stove Mounters, the Moulderers, and the Carpenters. Mr. Dale O. Reed, of Los Angeles, Calif., for the IAM. Mr. John Stevenson, of Los Angeles, Calif., for the Teamsters. Mr. Alexander H. Schullman and Mr. David S. Smith, of Los Angeles, Calif., for the Painters. Miss Ruth E. Bliefield, of counsel to the Board.

DECISION AND ORDER

On May 31, 1946, Trial Examiner Henry J. Kent issued his Intermediate Report in the above-entitled proceeding, finding that the respondents had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the respondents, the AFL, and the CIO filed exceptions to the Intermediate Report and supporting briefs. Pursuant

to notice to all parties, oral argument, requested by the respondents, was held before the Board at Washington, D. C. on July 30, 1946. All parties appeared and participated in the oral argument. The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

The Board has considered the Intermediate Report, the exceptions and briefs of the parties, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as hereinafter modified.

1. The respondents allege that the partnership respondent was improperly served with notice of the proceedings and that the appearance entered on the record was only for those members of the partnership respondent as to whom proper service had been made. The respondents contend that the interest of the partners in the partnership property cannot be bound unless all partners are properly served with process. Return receipts indicating service by registered mail on all members of the partnership were introduced into the record. These indicate that each member of the partnership, or his agent, signed a receipt, and Wilbur G. Durant, the manager of the partnership respondent, admitted at the hearing that he had been personally served with notice. Section 11 (4) of the Act, and Article V of the Rules and Regulations provide for the service of all complaints, orders, and other processes and papers of the Board by registered mail.

Article V of the Rules and Regulations further provides that the "verified return by the individual so serving the same, setting forth the manner of such service shall be proof of the same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same."¹

Under the provision for the liberal construction of the Rules and Regulations² and the aforementioned sections of the Rules and Regulations, it is clear that the Board is not bound by technical requirements as to service. Where, as here, a respondent is put on notice and is aware of the action and his rights and liabilities thereunder, and service has been made in accordance with the provisions of the Act, it is sufficient to bind all members of a partnership even in the absence of proof that each partner was served personally. We therefore find that all members of the partnership respondent are bound by the Decision and Order herein.

¹It is also to be noted that Section 2 of Article V of the Rules and Regulations provides:

Sec. 2. Same by parties; proof of service.— Service of papers by a party on other parties shall be made by registered mail or in any manner provided for the service of papers in a civil action by the law of the State in which the hearing is pending. When service is made by registered mail, the return post-office receipt shall be proof of service. When service is made in any manner provided by such law, proof of service shall be made in accordance with such law.

²Article IX of the Rules and Regulations.

2. The respondents except to the finding of the Trial Examiner that they are engaged in conducting a single business enterprise and are therefore jointly and severally liable for the unfair labor practices found by the Trial Examiner. They contend that the lease to the partnership was entirely valid, having been made under an absolute legal right; that the partnership respondent had been in existence for some time prior to the lease and was not formed for the purpose of evading the requirement to bargain with the CIO in accordance with the Board's certification of that organization; and that the partnership respondent is not the alter ego of the corporate respondent. We find this contention also to be without merit. It is clear from the record that there is a considerable community of interest between the two respondents. All members of the partnership respondent, except one who is an employee of the corporation, are stockholders in the corporate respondent. The corporate respondent bears part of the partnership respondent's pay roll expenses, since by the terms of the lease the corporate respondent pays for the pension fund, insurance, contributions to the Five and Over Club, and bonuses for the partnership respondent's employees. Also, the corporate respondent indirectly bears all salary expenses for the partnership respondent's employees, inasmuch as under the terms of the lease the corporate respondent pays all labor costs plus 2½ percent. While certain OPA and tax advantages have had some influence on the decision to transfer the manufacturing operations of the cor-

porate respondent to the partnership respondent, it is apparent that a major consideration was also the desire to be removed from the AFL unfair list. This could only be accomplished by signing a contract with the AFL. The employees, however, had voted for the CIO as their bargaining agent and that organization had been certified by the Board. It is true, as the dissenting opinion states, that the election was held while the respondents were re-converting to peacetime production, but the record shows that the number of persons employed by the respondents during the period in question remained relatively stable. Both at the time of the election and at the time of the transfer of employees from the corporate respondent to the partnership respondent, the total number of employees was approximately 341. Furthermore, there is no showing of change in type of the respondents' employees during the same period. Where, as here, the evidence indicates that the transfer to the partnership was motivated by two reasons, one legal and the other illegal, the burden was on the respondents to separate the two, viz., to show that the lease and transfer would in any event have taken place absent the illegal motivation.³ This the respondents have failed to do. We therefore find that the partnership respondent is liable for the unfair labor practices found herein and that the corporate respondent has violated Section 8 (5) of the Act by its refusal to

³See N. L. R. B. v. Remington Rand, Inc., 94 F. 2d 872 ('1. C. A. 2), cert. denied 304 U. S. 576.

bargain with the CIO. We also find that, under the circumstance set forth herein, the partnership respondent's contract with the AFL is invalid and should be set aside.

3. Exceptions have also been taken to the findings of the Trial Examiner relating to speeches made by William J. O'Keefe and Cecil Collins, and to the validity of the consent election as a result of which the CIO was certified. We have considered the record and the briefs of the parties, and we concur in the findings of the Trial Examiner.

4. We find no merit in the CIO's exceptions to the Trial Examiner's dismissal of the allegation that the respondents attempted by offers of payment of money to influence representatives of the CIO to surrender its position as the exclusive bargaining representative of the employees and to discontinue further activity on behalf of the CIO. We agree with the Trial Examiner that these allegations of the complaint should be dismissed.

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company, Los Angeles, California, and their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Urging, persuading, warning, or coercing their employees to join Stove Mounters International Union of North America, Local 125, AFL; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, AFL; International Moulders & Foundry Workers Union of North America, Local No. 374, AFL; District Lodge 94, for and on behalf of its affiliate, Local 311, International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, AFL; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL; encouraging membership in any of the above named organizations; and discouraging membership in United Steelworkers of America, Stove Division, Local 1981, CIO or any other labor organization of their employees;

(b) Recognizing or in any manner dealing with the IAM and the AFL labor organizations named in the preceding paragraph, or any of them, as the exclusive representatives of the respondents' employees for the purposes of collective bargaining in respect to wages, rates of pay, hours of employment, or other conditions of employment, unless and until said organizations, or any of them, shall have been certified by the National Labor Relations Board as the exclusive representatives of such employees;

(c) Giving effect to the union-shop contract

dated January 2, 1946, and signed on January 31, 1946, with the IAM and the AFL labor organizations named in paragraph 1 (a) above, or any modification, extension, supplement, or renewal thereof, or to any superseding or like agreement with them;

(d) Refusing to bargain collectively with United Steelworkers of America, Stove Division, Local 1981, CIO, as the exclusive representative of all production and maintenance employees at the Los Angeles plant of the respondents, excluding office clerical employees, guards, parcel post clerks, draftsmen, timekeepers, material expediters, pattern makers and pattern maker helpers other than those working in sheet metal, experimental laboratory workers, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from Stove Mounters International Union of North America, Local 125, AFL; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, AFL; District Lodge 94, for and on behalf of its affiliate, Local 311, International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of

America, Local 792, AFL; and Los Angeles County District Council of Carpenters. United Brotherhood of Carpenters and Joiners of America, AFL, as the exclusive representatives of their employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, unless and until the said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representatives of such employees;

(b) Upon request, bargain collectively with United Steelworkers of America, Stove Division, Local 1981, CIO, as the exclusive representative of all production and maintenance employees at the Los Angeles plant of the respondents, excluding office clerical employees, guards, parcel post clerks, draftsmen, timekeepers, material expediters, pattern makers and pattern maker helpers other than those working in sheet metal, experimental laboratory workers, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(c) Post at their plant at Los Angeles, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twenty-

first Region, shall, after being duly signed by the respondents' representative, be posted by the respondents immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents to insure that said notices are not altered, defaced, or covered by other material;

(d) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this order, what steps the respondent have taken to comply herewith.

And it is further ordered that the complaint be, and it hereby is, dismissed insofar as it alleges that the respondents violated the Act by attempting by offers of payment of money to influence representatives of the CIO to surrender the CIO's position as the exclusive bargaining representative of the employees, and to discontinue further activity on behalf of the CIO.

Signed at Washington, D. C., this 26th day of August, 1946.

PAUL M. HERZOG,

Chairman.

JOHN M. HOUSTON,

Member.

[Seal]

NATIONAL LABOR RELATIONS BOARD.

Gerard D. Reilly, dissenting in part:

While I agree with my colleagues that the closed-shop agreement signed by the partnership respondent with the A. F. of L. is invalid and that the corporate respondent refused to bargain with the CIO in accordance with the certification of that organization by the Board, I am unable to agree with that part of the remedy which orders the partnership respondent to bargain with the CIO.

During the war the corporate respondent was engaged in the production of generators and the partnership respondent was engaged in the production of parts for the generators. Both respondents had offices and manufacturing facilities in the same building. In 1944 the CIO filed a Petition for Investigation and Certification of Representatives with the Board. At the conferences with respect to this petition, the inclusion of the partnership respondent in the election was discussed. This petition was later dismissed by the Board because of the failure of the CIO to make a substantial showing of representation. In 1945 the CIO engaged in another organizational campaign, and in October 1945 it filed another Petition for Investigation and Certification of Representatives. This petition sought a unit of only the employees of the corporate respondent and did not include the employees of the partnership respondent. The election was held and certification issued during a reconversion period when the partnership respondent was finishing its wartime production orders and the corporate re-

spondent was reconverting to the manufacture of stoves. Because of this reconversion by the corporate respondent, the A. F. of L. threatened to reinvoke a secondary boycott of the corporate respondent's products which had been started in 1936 or 1937. The corporate respondent, because of the threat of the boycott, appealed to its employees to vote for the A. F. of L., but they chose the CIO instead.

In January 1946, the partnership respondent signed a closed-shop agreement with the A. F. of L. During this same month the corporate respondent transferred substantially all its employees to the partnership respondent. It is conceded that one of the reasons for the transfer was that under OPA regulations the partnership respondent could obtain high prices for its products because it was a new producer in the field.

On these facts, I feel that the change in the operations of the corporate respondent was not for the purpose of escaping the obligation to bargain with the CIO imposed by the Board's certification of that organization. Also, the CIO, in my opinion, knew the circumstances regarding the existence of the partnership respondent at the time that it filed its petition, and, nevertheless, chose not to include the employees of the partnership respondent in the unit sought. I do not, therefore, feel that the partnership respondent, which was not a party to the original representation case, should be required to bargain with the CIO without a new election among its employees, although I would direct the partner-

ship respondent to refrain from bargaining with either union unless and until it has been certified by the Board.

Signed at Washington, D. C., this 26th day of August, 1946.

GERARD D. REILLY,

Member National Labor Relations Board.

[Note: Intermediate Report of Trial Examiner is set forth at page 63.]

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a decision and order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will bargain collectively upon request with United Steelworkers of America, Stove Division, Local 1981, CIO, as the exclusive representative of all the employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is: All production and maintenance employees at our Los Angeles plant excluding office clerical employees, guards, parcel post clerks, draftsmen, time-keepers, material expeditors, pattern makers and pattern maker helpers other than those working in sheet metal, experimental laboratory workers, and

supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

We will not recognize Stove Mounters International Union of North America, Local 125, A. F. of L.; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, A. F. of L.; International Moulders and Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate, Local 311, International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L., as the exclusive representatives of any of our employees for the purpose of collective bargaining, or give effect to the contracts now existing with said organizations, unless and until said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representatives of our employees.

We will not urge, persuade, warn, or coerce our employees to join the I. A. M. or any of the A. F. of L. unions above-named, and we will not discourage membership in United Steelworkers of America, Stove Division, Local 1981, CIO, or any other labor organization, or encourage membership in the I.A.M. or any of the above-named A. F. of L. unions, or any other labor organization.

All our employees are free to become or remain members of United Steelworkers of America, Stove Division, Local 1981, C.I.O., or any other labor organization.

O'KEEFE & MERRITT
MANUFACTURING CO.,
Employer.

PIONEER ELECTRIC
COMPANY,
Employer.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Affidavit of service by mail and return receipts attached.]

In the United States Circuit Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

O'KEEFE AND MERRITT MANUFACTURING COMPANY and L. G. MITCHELL,
W. J. O'KEEFE, MARION JENKS, LEWIS
M. BOYLE, ROBERT J. MERRITT, ROBERT J. MERRITT, JR., and WILBUR G.
DURANT, individually and as co-partners,
doing business as PIONEER ELECTRIC
COMPANY,

Respondents.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 203.87, Rules and Regulations of the National Labor Relations Board, Series 5, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of a proceeding had before said Board entitled, "In the Matter of O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company and United Steel-

workers of America, Stove Division, Local 1981, CIO, and Stove Mounters International Union of North America, Local 125, affiliated with American Federation of Labor; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, affiliated with American Federation of Labor; International Moulders & Foundry Workers Union of North America, Local No. 347, affiliated with American Federation of Labor; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators & Paperhangers of America, Local No. 792, affiliated with American Federation of Labor; Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, affiliated with American Federation of Labor; and Refrigerator Fitters Union Association, Local 508, affiliated with American Federation of Labor, parties to the contract," the same being known as Cases Nos. 21-R-3101 and 21-C-2689, respectively, before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceedings was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

Case No. 21-R-3101

(1) Petition for certification of representatives filed by United Steelworkers of America on October 23, 1945.

(2) Agreement for consent election executed November 14, 1945.

(3) Tally of ballots and certification on conduct of election issued November 20, 1945.

(4) Consent determination of representative dated November 28, 1945.

(5) Items 1, 2, 3 and 4 are listed in the exhibit folder and included in item 7 below.

Case No. 21-C-2689

(6) Copy of order designating Henry J. Kent Trial Examiner for the National Labor Relations Board, dated March 6, 1946.

(7) Stenographic transcript of testimony held before Trial Examiner Kent on March 6, 13, 14, 15, 18, 19, 20, 21, 22, 26, 27 and 28, 1946, together with all exhibits introduced in evidence.

(8) Copy of Trial Examiner Kent's Intermediate Report dated May 31, 1946 (annexed to item 21 hereof).

(9) Copy of order transferring case to the Board, dated May 31, 1946, together with affidavit of service.

(10) Copy of erratum issued by Trial Examiner Kent on June 4, 1946 (annexed to item 21 hereof).

(11) Copy of A. F of L.'s request for oral argument before the Board, dated June 6, 1946.

(12) Copy of Stove Mounters request for extension of time for filing brief.

(13) Copy of company's exceptions to Intermediate Report, sworn to on June 8, 1946.

- (14) Copy of respondents' request for oral argument before the Board dated June 8, 1946.
- (15) Copy of Stove Mounters exceptions to the Intermediate Report, sworn to on June 13, 1946.
- (16) Copy of Board's telegrams dated June 14, 1946, granting all parties extension of time to file exceptions and briefs.
- (17) Copy of A. F. of L.'s exceptions to the Intermediate Report sworn to on June 18, 1946.
- (18) Copy of CIO's exceptions to Intermediate Report, sworn to on June 22, 1946.
- (19) Copy of notice of hearing for the purpose of oral argument before the Board, dated June 27, 1946.
- (20) Copy of list of appearances at oral argument held before the Board on July 30, 1946.
- (21) Copy of decision and order and annexed erratum and intermediate report issued on August 26, 1946, together with affidavit of service and United States Post Office Return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 26th day of April, 1948.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary.

In the United States Circuit Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

O'KEEFE AND MERRITT MANUFACTUR-
ING COMPANY, and L. G. MITCHELL,
W. J. O'KEEFE, MARION JENKS, LEWIS
M. BOYLE, ROBERT J. MERRITT, ROB-
ERT J. MERRITT, JR., and WILBUR G.
DURANT, individually and as co-partners,
doing business as PIONEER ELECTRIC
COMPANY,

Respondents.

PETITION FOR ENFORCEMENT WITH
MODIFICATIONS OF AN ORDER OF
THE NATIONAL LABOR RELATIONS
BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant
to the National Labor Relations Act, as amended
(6 Stat. 136, 29 U.S.C.A., Secs. 141, et seq. (Supp.
July, 1947)), herein called the Act, respectfully
petitions this Court for the enforcement of its order,
with the modifications recommended below in para-
graphs (5) and (6), against respondents, O'Keefe
and Merritt Manufacturing Company and L. G.
Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M.

Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company, and their officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company and United Steelworkers of America, Stove Division, Local 1981, CIO, and Stove Mounters International Union of North America, Local 125, affiliated with American Federation of Labor; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, affiliated with American Federation of Labor; International Moulders & Foundry Workers Union of North America, Local No. 374, affiliated with American Federation of Labor; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators & Paperhangers of America, Local 792, affiliated with American Federation of Labor; Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, affiliated with American Federation of Labor; and Refrigerator Fitters United Association, Local 508, affiliated with American Federation of Labor, parties to the contract, Case No. 21-C-2689."

In support of this petition, the Board respectfully shows:

(1) Respondent O'Keefe and Merritt Manufacturing Company, a California corporation, and respondents L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, doing business as Pioneer Electric Company, are engaged in business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court has jurisdiction of this petition by virtue of Section 10 (e) of the Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on August 26, 1946, duly stated its findings of fact, conclusions of law, and issued an order directed to the respondents, and each of them, and their officers, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing busi-

ness as Pioneer Electric Company, Los Angeles, California, and their officers, agents, successors, and assigns, shall:

1. Cease and desist from:
 - (a) Urging, persuading, warning, or coercing their employees to join Stove Mounters International Union of North America, Local 125, AFL; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, AFL; International Moulders & Foundry Workers Union of North America, Local No. 374, AFL; District Lodge 94, for and on behalf of its affiliate, Local 311, International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, AFL; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL; encouraging membership in any of the above named organizations; and discouraging membership in United Steelworkers of America, Stove Division, Local 1981, CIO, or any other labor organization of their employees;
 - (b) Recognizing or in any manner dealing with the IAM and the AFL labor organizations named in the preceding paragraph, or any of them, as the exclusive representatives of the respondents' employees for the purposes of collective bargaining in respect to wages, rates of pay, hours of employment, or other

conditions of employment, unless and until said organizations, or any of them, shall have been certified by the National Labor Relations Board as the exclusive representatives of such employees;

- (c) Giving effect to the union-shop contract dated January 2, 1946, and signed on January 31, 1946, with the IAM and the AFL labor organizations named in paragraph 1 (a) above, or any modification, extension, supplement, or renewal thereof, or to any superseding or like agreement with them;
- (d) Refusing to bargain collectively with United Steelworkers of America, Stove Division, Local 1981, CIO, as the exclusive representative of all production and maintenance employees at the Los Angeles plant of the respondents, excluding office clerical employees, guards, parcel post clerks, draftsmen, time-keepers, material expediters, pattern makers and pattern maker helpers other than those working in sheet metal, experimental laboratory workers, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

- (a) Withdraw and withhold all recognition from Stove Mounters International Union of North America, Local 125, AFL; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, AFL; District Lodge 94, for and on behalf of its affiliate, Local 311, International Association of Machinists; Brotherhood of Painters, Decorators and Paper-hangers of America, Local 792, AFL; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL, as the exclusive representatives of their employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, unless and until the said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representatives of such employees;
- (b) Upon request, bargain collectively with United Steelworkers of America, Stove Division, Local 1981, CIO, as the exclusive representative of all production and maintenance employees at the Los Angeles plant of the respondents, excluding office clerical employees, guards, parcel post clerks, draftsmen, timekeepers, material expediters, pattern makers and pattern maker helpers other than those working in sheet metal, experimental laboratory workers, and supervisory employ-

ees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

- (c) Post at their plant at Los Angeles, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the respondents' representative, be posted by the respondents immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents to insure that said notices are not altered, defaced, or covered by other material;
- (d) Notify the Regional Director for the Twenty-first Region in writing, with ten (10) days from the date of this order, what steps the respondents have taken to comply herewith.

3. On August 27, 1946, the Board's decision and order was served upon respondents by sending a copy thereof postpaid, bearing Government frank, by registered mail, to respondents' counsel.

4. Pursuant to Section 10 (e) of the Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

5. In order to conform with the requirements of Section 8 (c) of the Act, as amended, the Board recommends modification of the foregoing order as follows:

(a) By inserting in the first line of paragraph 1 (a) thereof the word "or" after the word "persuading," by deleting the comma after the word "warning," and by inserting after the word "warning" the words "by threat of reprisal or force or promise of benefit," so that the first line thereof will read, "Urging, persuading or warning by threat of reprisal or force or promise of benefit or coercing their employees."

(b) By inserting after the first sentence of paragraph 2 (e) thereof the following sentence: The first sentence of the third subparagraph of the aforesaid notice shall also be modified by inserting the word "or" after the word "persuade," by deleting the comma after the word "warn," and by inserting after the word "warn" the words "by threat of reprisal or force or promise of benefit," so that the first line of the first sentence shall read: "We will not urge, persuade, or warn

by threat of reprisal or force or promise of benefit, or coerce our employees to join."

6. In order to conform with the policy expressed in Section 9 (f) (g) and (h) of the Act, as amended, of withdrawing the aid of the Act's processes from a labor organization which fails to comply with the provisions of Section 9 (f) (g) and (h), to the extent only that the unfair labor practice involves a refusal to bargain to be remedied by an order to bargain, the Board recommends modification of the foregoing order as follows:

- (a) By inserting after the letters "CIO" in the second line of paragraph 1 (d) thereof the following phrase: If any when said labor organization shall have complied, within thirty (30) days from the date of the decree enforcing this order, with Section 9 (f) (g) and (h) of the Act, as amended,
- (b) By inserting after the words "Upon request" in the first line of paragraph 2 (b) thereof the following phrase: And upon compliance by the Union with the filing requirements of the Act, as amended, in the manner set forth above,
- (c) By inserting after the words, "notice attached hereto," in the second line of paragraph 2 (c) thereof, the following phrase: Modified to include the following phrase to be inserted after the first sentence of the first subparagraph of the notice and to be preceded by a semicolon: "provided that said

labor organization, and any national or international labor organization of which it is an affiliate or constituent unit, shall have complied, within thirty (30) days from the date of the decree enforcing the Board's order, with Section 9 (f) (g) and (h) of the National Labor Relations Act, as amended."

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondents and that this Court take jurisdiction of the proceeding and of the questions to be determined therein and make and enter upon the pleadings, evidence, and proceedings set forth in the entire certified record of said proceedings, and upon so much of the order as set forth in paragraph (2) hereof, as modified in paragraph (5) and (6) hereof, a decree enforcing said order of the Board, with the modifications recommended herein, and requiring respondents, and each of them, and their officers, agents, successors, and assigns to comply therewith. The Board further prays that this Court, in enforcing the order, with the modifications recommended herein, shall provide that the aforementioned notice, as modified, to be posted by respondents, marked "Appendix A," shall specifically recite that the Board's order has been enforced by a decree of this Court so that the introductory clause of the notice shall read as follows: "Appendix A, Notice to all Employees, Pursuant to a Decision and Order of the National Labor Relations Board, as enforced by

a decree of the United States Circuit Court of Appeals for the Ninth Circuit, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:”

RUTH WEYAND,

Acting Assistant General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 28th day of April, 1948.

APPENDIX A

Notice to All Employees

Pursuant to a decision and order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will bargain collectively upon request with United Steelworkers of America, Stove Division, Local 1981, CIO, as the exclusive representative of all the employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is: All production and maintenance employees at our Los Angeles plant excluding office clerical employees, guards, parcel post clerks, draftsmen, timekeepers, material expediters, pattern makers and pattern maker helpers other than those working in sheet metal, experimental laboratory workers, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect

changes in the status of employees, or effectively recommend such action.

We will not recognize Stove Mounters International Union of North America, Local 125, A. F. of L.; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, A. F. of L.; International Moulders and Foundry Workers Union of North America, Local No. 374, A. F. of L.; District Lodge 94, for and on behalf of its affiliate, Local 311, International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, A. F. of L.; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, A. F. of L., as the exclusive representatives of any of our employees for the purpose of collective bargaining, or give effect to the contracts now existing with said organizations, unless and until said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representatives of our employees.

We will not urge, persuade, warn, or coerce our employees to join the I. A. M. or any of the A. F. of L. unions above-named, and we will not discourage membership in United Steelworkers of America, Stove Division, Local 1981, CIO, or any other labor organization, or encourage membership in the I. A. M. or any of the above-named A. F. of L. unions, or any other labor organization.

All our employees are free to become or remain members of United Steelworkers of America, Stove

Division, Local 1981, CIO, or any other labor organization.

O'KEEFE & MERRITT
MANUFACTURING CO.,
Employer.
PIONEER ELECTRIC
COMPANY,
Employer.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

District of Columbia, ss:

Ruth Weyand, being first duly sworn, states that she is Acting Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that she is authorized to and does make this verification in behalf of said Board; that she has read the foregoing petition for enforcement and has knowledge of the contents thereof; and that the statements therein are true to the best of her knowledge, information and belief.

/s/ RUTH WEYAND,
Acting Assistant General
Counsel.

Subscribed and sworn to before me this 28th day of April, 1948.

ROSE MARY W. FILIPOWICZ,
Notary Public, District of Columbia.

My Commission Expires March 15, 1953.

[Endorsed]: Filed May 3, 1948.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED UPON
BY THE BOARD

On Petition for Enforcement of an Order of the
National Labor Relations Board

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board,
the petitioner herein, and, in conformity with Rule
19 (6) of the rules of this Court, files this statement
of points upon which it intends to rely in the above-
entitled proceeding and this designation of parts of
the record necessary for the consideration thereof:

I.

1. The Board's findings of fact that respondents
have engaged in and are engaging in unfair labor
practices within the meaning of Section 8 (1) and
(5) of the National Labor Relations Act are sup-
ported by substantial evidence.

2. The Board's order is valid and proper under
the Act.

II.

[Designation of parts of record omitted.]

* * * * *

/s/ RUTH WEYAND,

Acting Assistant General
Counsel.

NATIONAL LABOR RELA-
TIONS BOARD.

Dated at Washington, D. C., this 26th day of
April 1948.

[Endorsed]: Filed May 3, 1948.

United States of America—ss.

ORDER TO SHOW CAUSE

The President of the United States of America To:

O'Keefe and Merritt Manufacturing Company; and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company, 3700 E. Olympic Blvd., Los Angeles (23), California; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, Local 389, Att: Mr. John Stevenson, 846 Union, Los Angeles, Calif.; United Steelworkers of America, Stove Division, Local 1981, CIO; Att: Mr. Milton S. Tyre, 111 West 7th St., Los Angeles, Calif.; International Brotherhood of Electrical Workers, Local B-11, Att: Mr. C. DeMontreville, 1669 E. Anaheim, Wilmington, Calif.; Stove Mounters International Union of America, Att: Mr. Arthur Garrett, 756 S. Broadway, Los Angeles, Calif.; International Association of Machinists, Att: Mr. Dale O. Reed, 420 Van Nuys Building, Los Angeles, Calif.; and Brotherhood of Painters, Decorators & Paperhangers, Local 792, Att: Mr. Alexander H. Schullman, 215 W. 5th Street, Los Angeles, California.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 3rd day of

May, 1948, a petition of the National Labor Relations Board for enforcement with modifications of its order entered on August 26, 1948, in a proceeding known upon the records of the said Board as In the Matter of O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company and United Steelworkers of America, Stove Division, Local 1981, CIO, and Stove Mounters International Union of North America, Local 125, etc, et al., Case No. 21-C-2689," and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 4th day of May in the year of our Lord one thousand, nine hundred and forty-eight.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

No. 33267

RETURN ON SERVICE OF WRIT

United States of America,
So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to Show cause on the therein-named Pioneer Electric Co. by handing to and leaving a true and correct copy thereof with Fred F. Rotter. Designated to accept service, by O'Keefe & Merritt & Pioneer Electric Co. personally at Los Angeles in said District on the 26th day of May, 1948.

ROBERT E. CLARK,

U. S. Marshal.

By /s/ C. W. ROSS,
Deputy.

No. 33267

RETURN ON SERVICE OF WRIT

United States of America,
So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to Show cause on the therein-named O'Keefe & Merritt by handing to and leaving a true and correct copy thereof with Fred F. Rotter authorized to accept service for O'Keefe & Merritt personally at Los Angeles in said District on the 5th day of May, 1948.

ROBERT E. CLARK,

U. S. Marshal.

By /s/ C. W. ROSS,
Deputy.

No. 33267

RETURN ON SERVICE OF WRIT

United States of America,

So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to Show cause on the therein-named Stove Mounters International Union of America by handing to and leaving a true and correct copy thereof with Arthur Garrett, Designated to accept service personally at Los Angeles in said District on the 5th day of May, 1948.

ROBERT E. CLARK,
U. S. Marshal.

By /s/ C. W. ROSS,
Deputy.

No. 33267

RETURN ON SERVICE OF WRIT

United States of America,

So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to Show cause on the therein-named Brotherhood of Painters, Decorators & Paperhang-ers, Local No. 792, by handing to and leaving a true and correct copy thereof with Alexander H. Schull-man, designated to accept service personally at Los Angeles in said District on the 5th day of May, 1948.

ROBERT E. CLARK,
U. S. Marshal.

By /s/ C. W. ROSS,
Deputy.

No. 33267

RETURN ON SERVICE OF WRIT

United States of America,
So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to Show cause on the therein-named United Steel Workers Of America, Stove Division, Local 1981, C.I.O., by handing to and leaving a true and correct copy thereof with Mr. Milton S. Tyre, designated to accept service personally at Los Angeles in said District on the 5th day of May, 1948.

ROBERT E. CLARK,

U. S. Marshal.

By /s/ C. W. ROSS,
Deputy.

No. 33267

RETURN ON SERVICE OF WRIT

United States of America,
So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to Show cause on the therein-named International Association Of Machinists, by handing to and leaving a true and correct copy thereof with Dale O. Reed, designated to accept service personally at Los Angeles in said District on the 5th day of May, 1948.

ROBERT E. CLARK,

U. S. Marshal.

By /s/ C. W. ROSS,
Deputy.

No. 33267

RETURN ON SERVICE OF WRIT

United States of America,

So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to Show cause on the therein-named International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, Local No. 389, by handing to and leaving a true and correct copy thereof with John Stevenson personally at Los Angeles in said District on the 10th day of May, 1948.

ROBERT E. CLARK,

U. S. Marshal.

By /s/ C. W. ROSS,

Deputy.

No. 33267

RETURN ON SERVICE OF WRIT

United States of America,

So. District of Calif.—ss.

I hereby certify and return that I served the annexed Order to Show cause on the therein-named International Brotherhood of Electrical Workers, Local B, II by handing to and leaving a true and correct copy thereof with Mr. C. DeMontreville, designated to accept service personally at Wilmington in said District on the 10th day of May, 1948.

ROBERT E. CLARK,

U. S. Marshal.

By /s/ EARL C. FRIES,

Deputy.

[Endorsed]: Filed May 29, 1948.

[Title of Circuit Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCEMENT WITH MODIFICATIONS OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Come now the above named respondents and in answer to petition on file herein allege as follows:

I.

That the order of the National Labor Relations Board is void and of no effect, in that the findings of fact are not supported by any evidence.

II.

That the order of the Board is null and void in that it is in violation of the First Amendment of the Constitution, and does abridge the right of free speech as defined in the Labor-Management Relations Act of 1947.

III.

That the order is not enforceable in that it constitutes an enforcement of extraordinary remedy by a blanket injunction.

IV.

That the question presented by the Petition has become moot in that all employees of both concerns are and have been members in good standing of the various Crafts of the American Federation of Labor for over two years prior to the filing of the Petition herein.

V.

That the United Steelworkers of America Stove Division, Local 1981, CIO et al have not complied with the provisions of the Labor-Management Act of 1947, in that they have not filed affidavits of the officers of the union stating that each is not a Communist, as provided by paragraph (h) of Section 9 of the Labor-Management Relations Act of 1947.

VI.

That the remedy requested in said Petition is inconsistent with the Labor-Management Relations Act of 1947 wherein it provides that, other things being equal, the Board should allow the craft preferences of the employees; that the employees' preference, as herein above set forth, is 100% various American Federation of Labor crafts.

/s/ CECIL W. COLLINS,
Attorney for Respondents.

Dated at Los Angeles, California, this 14th day of June, 1948.

State of California,
County of Los Angeles—ss.

D. P. O'Keefe, being first duly sworn, states that he is president of O'Keefe & Merritt Manufacturing Co., one of the respondents herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer to petition and has knowledge of the contents thereof; and that the statements therein are

true to the best of his knowledge, information and belief.

/s/ D. P. O'KEEFE.

Subscribed and sworn to before me this 14th day of June, 1948.

[Seal] /s/ CECIL W. COLLINS,
Notary Public in and for the State of California,
County of Los Angeles.

[Affidavit of service by mail attached.]

[Endorsed]: Filed June 15, 1948.

[Title of Circuit Court of Appeals and Cause.]

On Answer to Petition for Enforcement of An
Order of the National Labor Relations Board

**STATEMENT OF POINTS RELIED UPON BY
THE RESPONDENTS AND DESIGNA-
TION OF PARTS OF THE RECORD
NECESSARY FOR THE CONSIDERA-
TION THEREOF**

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Come now O'Keefe and Merritt Manufacturing Company, and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company, respondents herein, and, in conformity with the rules of this Court, files this

statement of points upon which it intends to rely in the above-entitled proceeding:

I.

Statement of Points

1. The respondents incorporate herein, the same as though set forth in full at this point, all of the matter set forth in their answer to the Petition of the National Labor Relations Board.

II.

Designation of Parts of Record

1. The respondents allege that due to the complexity of this matter, and in order to properly present respondents' case, it is necessary to have available the entire record, and respondents request that in addition to those parts of the record designated by petitioner, all of the rest of the record be incorporated therein.

/s/ CECIL W. COLLINS,
Attorney for Respondents.

Dated at Los Angeles, California, this 14th day of June, 1948.

[Endorsed]: Filed June 15, 1948.

Before the National Labor Relations Board

Twenty-First Region

Case No. 21-C-2689

In the Matter of

O'KEEFE AND MERRITT MANUFACTURING COMPANY and L. G. MITCHELL, W. J. O'KEEFE, MARION JENKS, LEWIS M. BOYLE, ROBERT J. MERRITT, ROBERT J. MERRITT, JR., and WILLIAM J. DURANT, individually and as Co-partners, d/b/a PIONEER ELECTRIC COMPANY
and

UNITED STEELWORKERS OF AMERICA, STOVE DIVISION, LOCAL 1981, C. I. O., and STOVE MOUNTERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 125, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 389, affiliated with AMERICAN FEDERATION OF LABOR; INTERNATIONAL MOULDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA, LOCAL 376, affiliated with AMERICAN FEDERATION OF LABOR; DISTRICT LODGE 96, for and on behalf of its affiliate LOCAL 311 of the INTERNATIONAL ASSOCIATION OF MACHINISTS; BROTHERHOOD OF PAINTERS, DECORATORS

AND PAPERHANGERS OF AMERICA,
LOCAL 792, affiliated with AMERICAN
FEDERATION OF LABOR; UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, affiliated with
AMERICAN FEDERATION OF LABOR;
AND REFRIGERATOR FITTERS
UNITED ASSOCIATION, LOCAL 508, affiliated
with AMERICAN FEDERATION OF
LABOR, parties to the contract.

Room 704, Board of Trade Building,
111 West Seventh Street,
Los Angeles, California,

Wednesday, March 6, 1946.

The above-entitled matter came on for hearing,
pursuant to notice, at 10:00 o'clock a.m. [1*]

Before: Henry J. Kent,
Trial Examiner.

Appearances:

Maurice J. Nicoson and Eugene M. Purver, 111
West Seventh Street, Los Angeles, California, appear-
ing on behalf of the National Labor Relations
Board.

Cecil W. Collins, 3700 E. Olympic Boulevard, Los
Angeles, California, appearing on behalf of
O'Keefe and Merritt Manufacturing Company and
L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis
M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr.,

* Page numbering appearing at top of page of Reporter's certified
Transcript of Record.

and William J. Durant, individually and as co-partners, doing business as Pioneer Electric Company.

Katz, Gallagher & Margolis, By: Milton S. Tyre, 111 West Seventh Street, Los Angeles, California, appearing on behalf of United Steelworkers of America, Stove Division, Local 1981, CIO.

C. DeMontreville, Brice Worley and James Wolf, 1669 E. Anaheim, Wilmington, California, appearing on behalf of International Brotherhood of Electrical Workers, Local Union B-11, A. F. of L.

Arthur Garrett, 756 S. Broadway, Los Angeles, California, appearing on behalf of Stove Mounters International Union of North America, Local 125; International Moulders & Foundry Workers Union of North America, Local 376; United Brotherhood of Carpenters & Joiners of America, all affiliates of American Federation of Labor. [2]

Dale O. Reed, 420 Van Nuys Building, Los Angeles, California, appearing on behalf of District Lodge 96, for and on behalf of its affiliate Local 311, of the International Association of Machinists, A. F. of L.

John Stevenson, 846 S. Union, Los Angeles, California, appearing on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, A. F. of L.

Alexander H. Schullman, 215 West Fifth Street, Los Angeles, California, appearing on behalf of Brotherhood of Painters, Decorators and Paper-hangers of America, Local 792, A. F. of L. [3]

PROCEEDINGS

Trial Examiner Kent: Are the parties ready to proceed?

Mr. Niceson: The Board is ready.

Mr. Collins: I have a motion to make on behalf of one of the respondents. With that exception we are ready.

Trial Examiner Kent: I will entertain that. I will make a short formal opening statement before we proceed to take that.

This is a formal hearing before the National Labor Relations Board in the matter of O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and William J. Durant, individually and as co-partners, doing business as Pioneer Electric Company and United Steelworkers of America, Stove Division, Local 1981, CIO, and Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, affiliated with American Federation of Labor; International Moulders and Foundry Workers Union, of North America, Local 376, affiliated with American Federation of Labor; District Lodge 96, for and on behalf of its affiliate Local 311, of the International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, affiliated with American [5] Federal

tion of Labor; United Brotherhood of Carpenters and Joiners of America, affiliated with American Federation of Labor; and Refrigerator Fitters United Association, Local 508, affiliated with American Federation of Labor; the various A.F.L. unions apparently being parties to a contract.

The Trial Examiner, namely, myself, appearing for the National Labor Relations Board is Henry J. Kent; K-e-n-t.

At this time I would request counsel to state all appearances orally for my benefit.

Mr. Nicoson: Maurice J. Nicoson and Eugene M. Purver for the Board.

Mr. Tyre: Wilton S. Tyre from Katz, Gallagher & Margolis, Attorneys for United Steelworkers of America, Stove Division, Local 1981, C.I.O.

Mr. Garrett: Arthur Garrett, attorney for Stove Mounters Local 125 named as Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor;

Attorney for Moulders & Foundry Workers, Local 374, named herein as International Moulders & Foundry Workers Union of North America, Local 376;

And Attorney for Los Angeles County District Council of Carpenters named here as United Brotherhood of Carpenters & Joiners of America.

All the organizations I represent are affiliated with the [6] American Federation of Labor.

Trial Examiner Kent: Well, do you represent the various A.F.L. unions named in the caption of the complaint?

Mr. Garrett: I represent the three organizations for which I have just orally entered my appearance.

Trial Examiner Kent: I see.

Mr. Garrett: And the organizations named here, together with the complaint, I understand, on the theory of some alleged connection with the contract involved in this case.

I don't know whether to describe the organizations for which I appear as respondents. They are certainly not complainants. Possibly I should say they are interested parties.

Mr. DeMontreville: International Brotherhood of Electrical Workers, Local Union B-11, American Federation of Labor; C. DeMontreville and James Wolf, Economic Counsel.

Mr. Stevenson: John Stevenson, Teamsters Union, Local 389.

Trial Examiner Kent: What is that local again?

Mr. Stevenson: 389.

Trial Examiner Kent: That is Teamsters?

Mr. Stevenson: Yes.

Mr. Collins: Cecil W. Collins, representing O'Keefe and Merritt Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and William J. Durant, individually and as co-partners, doing [7] business as Pioneer Electric Company.

Mr. Reed: Mr. Trial Examiner, I would like to enter on the record that Dale O. Reed is appearing for the Machinists in this case.

Trial Examiner Kent: What is the name again on that last?

Mr. Reed: The last appearance?

Trial Examiner Kent: Yes.

Mr. Reed: Dale O. Reed on behalf of the International Association of Machinists.

Trial Examiner Kent: Are there any other parties present in the hearing room claiming to have an interest?

Mr. Collins: It has just been called to my attention by Mr. Collins of the Painters that he is to be represented by Mr. Schullman, who will be here later.

Trial Examiner Kent: The Painters?

Mr. Collins: The Painters will be represented by Mr. Schullman.

Trial Examiner Kent: Will some of the other A.F.L. representatives present inform Mr. Schullman to formally enter his appearance when he appears?

A Voice: Mr. Schullman, I think, will be about 10 or 15 minutes late. He notified me by phone he would be. He should be here by 10:20.

Mr. Nicoson: Mr. Trial Examiner, this may not be the [8] appropriate time for this, but since Mr. DeMontreville has entered an appearance on behalf of the I.B.E.W., and so far as the complaint is concerned, no allegations are made about that organization, I would like to inquire for what purpose he appears.

Mr. DeMontreville: We have a 100 per cent membership among the electrical workers, and we are merely here to protect whatever interest might arise for that unit.

Mr. Nicoson: I would, in that case, your Honor, request that he follow the rules and regulations as to procedure to intervene and file his written motion and have it ruled upon, at which time I would like to be heard.

Trial Examiner Kent: Yes. I think Mr. Nicoson's objection is well taken. I think you should formally file a motion to intervene in writing.

Mr. DeMontreville: We will.

Trial Examiner Kent: I will state this: If you are not prepared to now, why, I think the Board certainly won't finish its case today. Will it; do you think?

Mr. Nicoson: I doubt it.

Trial Examiner Kent: If you will have that ready to present at 2:00 o'clock—or if we were to take a short recess at this time can you have it ready?

Mr. DeMontreville: Yes.

Trial Examiner Kent: All right. I want to check the [9] pleadings, anyway. I want to make this statement and then we will entertain a written motion to intervene after a short recess.

Hearing no other parties claiming an interest in these proceedings, I, therefore, assume there are none.

The official reporter makes the only official transcript of these proceedings. Citations in briefs or arguments based upon the record, directed to the Trial Examiner or to the Board, must cite the official transcript in all references to the record. The

Board will not certify any transcript other than the official transcript for use in any court litigation.

It may become necessary to make corrections in the record during the hearing. If so, the party desiring the correction will submit the suggested correction to the other party or parties in writing. When this has received their written approval it will be submitted to the Trial Examiner.

In the event the parties are unable to agree upon proposed corrections, the Trial Examiner will then consider motions to correct the record or may, upon his own motion, order certain corrections made.

If the parties have been unable to agree upon such corrections before the close of the hearing, but have entered into a stipulation concerning such matters after the close of the hearing, but before the transfer of the case to the Board, such stipulations or motions should be addressed to the [10] Trial Examiner in care of the Chief Trial Examiner, Rochambeau Building, Washington, D. C. After the transfer of the case to the Board, all such communications should be directed to the Board itself, inasmuch as by such transfer to the Board the Trial Examiner's connection with the case ceases.

Since this is a formal hearing we shall maintain the dignity and decorum that usually accompanies judicial proceedings.

Concise statements of reasons for motions or objections will be permitted, but the Trial Examiner may go off the record for the purpose of hearing extended argument. Off the record discussion or argument will not be included in the official trans-

script unless an order to that effect be made by the Trial Examiner, either upon the request of any of the parties or upon his own motion. All requests to go off the record shall be directed to the Trial Examiner and not to the reporter.

The Trial Examiner will allow an automatic exception to all adverse rulings, and upon appropriate order an objection and exception will be permitted to stand to an entire line of questioning.

Five copies of all pleadings submitted during the hearing are to be filed with the Trial Examiner. All exhibits offered in evidence should be in duplicate.

At the close of the hearing the parties may, if they so [11] request, argue orally before the Trial Examiner, or at such time if the Trial Examiner believes that oral argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved, he may request oral argument from the parties and will feel free to discuss with and ask questions of counsel or representatives of the parties with respect to their contentions as to the issues, the facts and legal principles involved. Oral argument at the close of the hearing will not be included in the stenographic report of the hearing unless the Trial Examiner at the time so directs.

Any party shall be entitled, upon request made before the close of the hearing, to file a brief with the Trial Examiner, who at that time will indicate the time within which said briefs should be filed.

Five copies of briefs should be directed to the

Trial Examiner, in care of the Chief Trial Examiner in Washington.

I make this statement at this time so the counsel may schedule their time accordingly.

At this time we will take a recess for about 20 minutes in order that I may have an opportunity to check the pleadings.

Mr. Stevenson: Mr. Examiner, before you recess I wonder if we might be permitted to make a motion here.

Trial Examiner Kent: It might be well, so I will have [12] your matter before me when I check the pleadings, and I will reserve ruling.

Mr. Stevenson: On behalf of the Teamsters, Local 389, we are asking for a continuance in this matter for time to prepare an answer and prepare evidence in the case.

This complaint I first had the opportunity of going over yesterday. It is absolutely impossible in the time, even intervening between the service of the complaint and the time set for this hearing, for us to have prepared any case at all to present to the Board.

I might add that the date set for this hearing was set without any consultation insofar as our organization was concerned. I have a case set in San Diego in the Superior Court and I have another set in Santa Ana on Friday in the Superior Court, both of which require preparation. It is absolutely impossible for me to attend these hearings and represent my clients in the matter. It is my belief that in order to give us any opportunity to prepare a

case whatever that some date mutually agreeable to counsel be set so we can arrange a schedule or calendar accordingly.

It is impossible for any attorney these days, who is at all occupied, to have an arbitrary date set in this fashion, without consultation, and come down and spend three or four or five or six days in one of these hearings.

I know that, insofar as the Teamsters organization is [13] concerned, unless we are given time and a date which is in conformity with court cases already set, we might just as well abandon the hearing. We can't present a case to the Board. It is an impossibility. We cannot get continuances on the cases in Superior Court, either in San Diego or Santa Ana. They are both injunction matters. So we are going to ask the Board for a continuance in this matter, giving us an opportunity to prepare a case to present to the Board. [14]

Now, I want to call the attention of the Examiner to the fact that neither I nor any of the other counsel in this case were given even 10 days customary time to answer, much less any consideration in the matter of setting a trial date. With that sort of procedure we cannot do anything in the way of preparing a defense.

Mr. Collins: Mr. Trial Examiner, on behalf of the respondents Pioneer Electric and O'Keefe and Merritt, I wish to join Mr. Stevenson's motion for a continuance.

I have the further ground, represented by an affidavit of one of my defendants, that one of the

defendants, Marion Jenks, is in Honolulu, Hawaii. Mr. Durant, one of my clients, at the time I was served with this, to wit, on the 25th of February, was on his way back from Washington, D. C. At least at the time we made out the affidavit we thought that was where he was. We subsequently found out he arrived at his home in Pasadena for one hour Saturday afternoon, the 23rd, and he made arrangements to be married in Las Vegas, and made arrangements to go to Las Vegas within an hour. He didn't return until the following Wednesday. Neither Mr. Durant nor Marion Jenks have had an opportunity within the rules of the court itself to file their answer. I am here to protect their rights in whatever manner I can.

I would like to also point out to the Trial Examiner I called Mr. Stewart Meacham, the Regional Director, in [15] ample time and asked for a continuance. He stated to me at that time he wouldn't give any continuance, not even a short week, to get hold of my clients in Hawaii and Washington, D. C. We are forced into a hearing to do the best we can. I am not prepared to represent these people at this time. We have had no opportunity to confer. I have not had an opportunity to confer with them. I have had no opportunity to confer with my clients in one group, to sit down and confer with them about their rights and the facts of this case. I feel we are entitled to a reasonable continuance, not only as a matter of courtesy but as a matter of right under Section 10 of the rules of this Board. We are

entitled to 10 days within which to answer. We haven't received that right.

This amended complaint was served on my clients the 27th, received by registered mail. As a matter of fact, five or six of the people I represent have not been actually served with this complaint. It was addressed to their place of business and received by some employee. It seems to me most irregular that we should be forced into this so fast.

Like Mr. Stevenson, I have other law business that has to be taken care of. We can't go into the Superior Court to ask them to grant a continuance because this Board will not grant one.

To support my motion for continuance, I would like to [16] file an affidavit signed by L. J. Mitchell authorizing me to request a continuance, and also a letter to Mr. Stewart Meacham, Regional Director, signed by Mr. O'Keefe of O'Keefe and Merritt Company.

Trial Examiner Kent: I understood you to say service was made on February 25th.

Mr. Collins: That was on one.

Trial Examiner Kent: Of the second amended complaint?

Mr. Collins: Of the second amended complaint.

Trial Examiner Kent: There was prior service of the original complaint?

Mr. Collins: Not on Mr. Durant. He was in Washington, D. C.

Mr. Nicoson: I would like to be heard before you rule on the motion.

Trial Examiner Kent: I am not going to rule until after I consider the pleadings as a whole. I would be glad to hear from you at this time.

Mr. Garrett: I have another motion to make prior to the time Mr. Nicoson replies. If you don't mind, Mr. Nicoson.

Mr. Nicoson: Oh, no. Go right ahead.

Mr. Garrett: On behalf of the Stove Mounters and Molders and the Carpenters, I similarly move for a continuance of this trial for the purpose of enabling those organizations to prepare what matter, by way of reply, is required from [17] them in this case.

This business of the Board setting these hearings on very short notice and without consultation with the parties involved, as to other previous trial engagements, and that sort of thing, it is becoming pretty serious. It was even worse than that up to recently when the National War Labor Board was doing the same thing.

There is a relatively small group of attorneys in this city who handle the interests of most of the labor organizations on one side or the other, the C.I.O. or the A.F.L. side. They are busy. They have trial engagements in the courts of record of this State which have been made on motion, so that the convenience of counsel on both sides could be consulted. Those trials having been set, I am in the same position Mr. Stevenson is with injunction cases, that intervene during the course of time this hearing will normally take, and are cases I can't get continued, hearings of trials I can't get

continued. Mr. Schullman will probably turn out to be in the same position.

Trial Examiner Kent: I am wondering, with so many counsel appearing, if it would ever be possible to get a date mutually satisfactory to all of you.

Mr. Stevenson: It would, just like a court trial.

Trial Examiner Kent: Somebody else would come in and raise the same question. [18]

Mr. Collins: There is nothing unusual about this, Mr. Trial Examiner. It is the same in any court appearance. We have the same problem there. This Board is arrogating itself arbitrarily, forgetting everybody else's convenience other than its own.

Mr. Garrett: I don't think anybody is arrogating anything. I realize the situation of the Board. There is something to what your Honor says.

Suppose Mr. Stevenson represents the Teamsters here all over Southern California and I represent the Carpenters and the other organizations and DeMontreville represents the Electricians and Schullman represents the Painters—

Trial Examiner Kent: There is another serious problem that confronts the Board that doesn't even confront the ordinary court. The judge in the State and Federal Court have a docket of cases pending in the particular forum. If a continuance is granted in one case, he can immediately be transferred to another case. But the way the docket of the Board is made up the Trial Examiner has to be sent out

and it just ties up, disrupts the entire trial docket.

Mr. Garrett: I am going to agree with your Honor in the statement you made.

Trial Examiner Kent: There was one continuance in this case.

Mr. Garrett: In this case? [19]

Trial Examiner Kent: I don't know currently what the reason for it was, but the file I checked in Washington before I came had the original complaint, and I think it was originally set for hearing on February 27th, if my recollection is right, and then the case for some reason or other was continued until March 6th, so that the statement that the parties had some knowledge, and I would think an opportunity to generally prepare for this case —though I notice there are a lot of additional American Federation of Labor Unions named as parties in the amended complaint. I think before it was the Stove Mounters and the Metal Trades Council of Los Angeles.

Mr. Garrett: I am glad your Honor has proved willing to discuss this matter with me, because we are going to be able to arrange things now so your Honor doesn't rule on these motions under any misapprehension. If you didn't discuss it, you would be in danger of doing someone a substantial injustice.

You are quite right. When you have Stevenson and myself and Schullman, you are probably not going to be able to set any date that will be agreeable to all our calendars, arbitrarily or otherwise, if you do it on ten days' notice. [20]

The point is, however, that that would be true of almost any situation. You can't set hearings on 10 days' notice and not cut across the trial engagements of attorneys and also the substantial rights of the parties.

Now, the only thing I have ever seen in this case —I have a file here and it has three documents in it. One is a document stating that an attorney who might have been able to handle the case is absent in San Diego. I think he was down there with Mr. Stevenson.

Another is a copy of a letter which company's counsel has just filed. And a third is a copy of the second amended complaint with notice of hearing on this date, which shows, according to my office stamp, that it was received on February 26th, probably from one of the parties whose name I have entered my appearance for today. That was last week, wasn't it? There was a holiday intervening. We have been up here on another hearing in that time.

I don't know anything about the original complaint or the first amended complaint. I have received this second amended complaint and I have had time before coming in here to do just one thing in connection with this case, and that is read the second amended complaint.

Trial Examiner Kent: Let me ask a question. When was service of the amended complaint made upon your clients?

Mr. Garrett: I would assume that it was served on the [21] preceding day or the same day as re-

ceipt in my office, as shown by my office stamp. It was received on February 26th in my office. That is just 10 days ago. Is it? Or less than 10 days; nine days ago.

This particularly copy, I believe, was sent over by a messenger from the District Council of Carpenters. I was informed on the day after they received it. They called me up in the evening. It was too late to meet them. I said, "Send it over here the first thing tomorrow morning."

If I may be permitted to indulge in some speculation—perhaps unfounded, based entirely upon a reading of the complaint—this case has some of the aspects of some very important cases that have been litigated in this region in hearings that sometimes ran into months. Some very serious accusations are levelled against a number of people in this complaint. The complaint constitutes the basis for what would seem to me should be very serious and carefully prepared and conducted litigation.

Trial Examiner Kent: You complain about the Board providing 10 days' notice. Of course, Congress only provides five. The Board voluntarily extended that notice.

Mr. Garrett: I don't complain about any procedural actions of the Board, because I know it isn't going to do me any good to complain about them. I do complain, and I address [22] this thought to the consideration of one who seems to be inclined to want to be a fair trier of the issues involved in this case: I assume your Honor hasn't

prejudged, I assume your Honor understands the vital interests of the American Federation of Labor Unions which are affected, even though they are not defendants or respondents in this case.

Trial Examiner Kent: Yes, there is no question about that. There is no question but that you are apparently parties entitled to your day in court.

There are a number of you. Your interests, while they are not identically the same, all the various A.F.L. Unions, it seems to me—not as yet being familiar with the whole picture—to be substantially similar. I don't see why some two or three counsel couldn't represent all of you, if on certain days of the hearing all of you are not able to be here, all of you are not able to be present. We would have the difficulty, anyway, you gentlemen are raising now no matter what day we grant continuances to. We will be having other men come in and raise the same question.

Mr. Garrett: As far as I am concerned, I don't expect to get any more consideration for my trial calendar in this court than I get from judges of the Superior and other courts, which is practically none on many occasions.

I address my objections, not so much to the havoc that is raised with the interests of the attorneys here and other [23] clients of those attorneys not represented here, I address my remarks, in an attempt to raise the question in your Honor's mind as to whether scheduling a hearing without notice, giving the parties adequate time to prepare, is not in effect a denial of the right of trial itself, and

whether or not the period of notice shouldn't have some rational relationship to the seriousness of the case and the length of time it will take to prepare the defense or the position, the length of time it will take to go into a situation and the circumstances under which the document upon which the trial is to be had came into the hands of the parties.

Now, it is absolutely clear, as you apparently know, from the records, that the people I represent haven't been in here before a matter of nine days ago. There is something else I notice, too, and that is the very people who might be in a position, who know the most about this transaction on the A.F.L. side, who might be in a position, you might say, to have some previous training through experience with the facts and how to defend the case, that is, the local Metal Trades Council, have for some reason been dropped out of this complaint and aren't here to give assistance. Apparently they were the people that were active in negotiations on behalf of all the A.F.L. Unions with the company.

Mr. Nicoson: I don't concede that is apparent.

Mr. Garrett: Well, is it a fact? This is a motion for continuance, after all. I think it is a fact.

Mr. Nicoson: I think we ought to stick to facts, then, Mr. Garrett.

Mr. Garrett: Of course, I haven't any affidavits.

Mr. Nicoson: No, sir.

Mr. Garrett: If that statement is not true, it is not true. If Mr. Nicoson can say it isn't true, that the Metal Trades Council should have a superior

knowledge of the facts involved in this case, to me or to Mr. Stevenson, if he can say that isn't true, he can say so, and I will withdraw the contention. If it is true, my clients go to trial on a complaint they received on February 25th or the 26th. Then, apparently, they didn't know they were going to be joined in any action until that was received. They go to trial with one organization which would have the most intimate knowledge of the facts for some reason no one except the State or the prosecutor knows was dropped out of the litigation, and they go to trial on a case that is too serious for anybody to prepare in the time before February 26th and between February 26th and today.

These other men, they have had plenty of time to think this thing over and investigate and get the reports of their field examiners in. They have gone through this. This is the second amended complaint. There isn't any justice in [25] the relationship between the time the parties, on one side, and the parties, on the other, are given.

Trial Examiner Kent: Well, according to the affidavit of service the amended complaint—

Mr. Garrett: Is that the second amended complaint?

Trial Examiner Kent: Yes. Well now, let's see. Wait a minute. No, it wouldn't have been the second one.

Well, the affidavit of service indicates that the second amended complaint and order of postponement of the hearing was mailed on February 21, 1946.

Mr. Garrett: The next day was a holiday. And the next day was a Sunday; wasn't it?

Mr. Nicoson: Saturday.

Mr. Garrett: Saturday. The next day was when the union office wasn't open; nobody could have had it until the 25th.

Trial Examiner Kent: In any event, it seems like there was full 10 days' time.

Mr. Garrett: Is there a return registry receipt there?

Trial Examiner Kent: I haven't it. I have a partial file. I will listen to Mr. Nicoson.

Mr. Stevenson: May I say this:—

Mr. Nicoson: Yes.

Mr. Stevenson: Insofar as we are concerned, in the first place, Mr. Examiner, your rule does not compel and no common sense can compel these defendants to come to trial in 10 days. [26] The rule says that they shall be given 10 days to answer, and additional time on motion if cause is shown for that additional time.

Now, that is 10 days to answer. Here we are being forced into a trial less than ten days, without any reference to calendar hearings.

Now, we have to observe some common sense in this matter. Every attorney here—it doesn't matter who it is—has cases. For instance, I have a case set in Santa Ana on Friday. I can't delegate my representation of my organization to anybody. There is no reason why an attorney in a case like this should be forced to try to delegate them to anybody. [27]

Mr. Garrett has lots to do besides going out and preparing my case for me. I have a great deal to do in preparing my own case, besides worrying about his interest during the course of this trial.

Now, we just can't be here during the trial. I want to say, insofar as the Teamsters are concerned, if we are forced to come into a hearing with no consultation whatsoever, with no regard being taken to our previous engagements in court, with no time to answer the complaint, not even the time fixed by the Board under its rules, we are just simply going to have to make that statement to the Board and walk out. We have had no time to prepare evidence in a matter like this.

I am sure, if you have had experience with the courts, that you wouldn't want to be forced into court on a case on as short a time as five or six days' preparation with all of the other things you have; never minding the necessity of getting hold of the various parties and trying to get some evidence up.

In this case the evidence lies within the knowledge largely of men who aren't even in town. I have had no chance whatever to confer with any of the parties named here. We are accused of being parties to an illegal contract. I haven't had any opportunity to confer with a single man in the company employ or the executives to find out what the situation is, the true situation, with regard to this corporation, with regard to the change from the O'Keefe and Merritt Company to the Pioneer Electric Company, with regard to assembling evidence in that matter. It is out of the question to try to

assemble evidence under those circumstances. I can't conceive of that sort of procedure being followed in a case involving four or five attorneys here, with no chance to prepare.

Trial Examiner Kent: How many employees are represented by your Union?

Mr. Stevenson: By the Teamsters?

Trial Examiner Kent: Yes.

Mr. Stevenson: The exact number at the place, I don't know. Every person driving trucks for Pioneer Electric is a member of the Teamsters Organization. All of them, the entire unit.

Trial Examiner Kent: About how many is that?

Mr. Stevenson: I would have to ask.

Mr. Nicoson: That is about twenty.

Mr. Stevenson: How many are there?

A Voice: Approximately eighteen.

Mr. Stevenson: Eighteen. The number of the employees is beside the question. Here is the situation we are confronted with: We are confronted with a situation where the Teamsters are being accused in this complaint of being parties [29] to an illegal contract, whether there is one employee or fifty or five thousand; that is a vital question to us.

I don't think we should be forced to try to come in here with no chance whatever to prepare any sort of a defense. We can't do it. We will simply have to withdraw, and go ahead and hold the hearing and do anything the Board wants to do with it. I can't do that without entering my protest on the record. I have had no opportunity whatever to prepare any sort of a case here.

Now, it isn't unreasonable to ask, in a case like this, for time. It is unreasonable to set a hearing less than 10 days from the time we receive service, when the rules provide 10 days for filing of an answer, and then a hearing date set after that. Time for amendments, time for motions after the 10 days. If it isn't sufficient the rules provide we should be given additional time. We are not even given time to file the original answer, much less additional time.

Mr. Schullman: I just came into the room, Mr. Trial Examiner. I appear on behalf of the Brotherhood of Painters, Decorators and Paperhangers of America, Local 792.

I just heard the last remarks of Mr. Stevenson. I join in a motion, I presume is being made, for a continuance. I got a telephone call. I was elsewhere. I was told there was a conference. I didn't know there was even a hearing.

I have just been handed for the first time a paper. I realize that dereliction can't be visited on the Board, but probably on my clients. Nevertheless, as I hear Mr. Stevenson's statement, apparently the time elements that are involved in the Act itself haven't been complied with. I don't know. I am not familiar with the facts behind it, and I wouldn't attempt to discuss it logically or sensibly without going into it. But as counsel who has just been retained informally, in this matter, representing the group I mentioned, I certainly join in a motion for continuance.

I know, at least so far as my clients are concerned, I don't think you could have a due process hearing without notice and a chance to have counsel. I don't think there has been any delay so far as I understand, so far as my clients are concerned in having counsel. We formally join in the motion.

I will be very happy to supply some cases where the NLRB attempts to proceed without complying with its own procedural rules, and deprives the litigant of a chance to go into the issues.

And more importantly I might mention this: Without being familiar with the facts—I am not going to attempt to discuss it—but presumably this is a hearing between different contending groups. The fact a motion has been made for continuance indicates to me, without having been here, that apparently one of the parties or more object to [31] the continuance. I think all of us are more interested, under the NLRB, in getting actual representation as the Act provides.

If facts are necessary to be adduced before this Examiner, opportunity should be given, rather than precipitiously plunging into a hearing without that information.

We, therefore, reiterate our request and move for such a continuance. If the Examiner orders us to go ahead, we will then jurisdictionally have to object to the jurisdiction having been deprived of due process in behalf of Local 792.

Mr. Nicoson: May I inquire of the parties how much postponement they want, so I can see what I have to meet? They have all come in here and

asked for a postponement. None of them have been definite enough to even hint at the time.

Mr. Stevenson: I think that is a matter of procedure that is followed by the courts. Let's try to get together and fix a trial date within a reasonable time to suit everybody. Maybe it won't suit everybody. Maybe I will have to make a sacrifice, maybe the Company will have to, maybe Mr. Garrett will, but we are glad to do that.

Mr. Schullman: Don't forget Mr. Schullman.

Mr. Stevenson: Mr. Schullman might do that, too. I don't know. [32]

Trial Examiner Kent: Mr. Schullman, somebody mentioned the fact you would enter an appearance.

He represents one of the Unions?

Mr. Nicoson: That is correct. He represents the Painters.

Mr. Schullman: I might say this is entirely completely whole blush to me. I was told I wasn't coming to a hearing. I asked for a conference room. So I certainly am entitled to something. I would want to file an answer. I haven't had a chance to. I don't even know which gentleman is my client here. Let's not proceed—

Trial Examiner Kent: I would assume, if there has been any negligence, it has been on the part of your clients.

Mr. Schullman: There would be negligence if there had been time involved. From what I understand time for an answer hasn't expired. There-

fore, I would ask now for a reasonable time in which to file an answer on behalf of my clients.

Trial Examiner Kent: The answer should be filed. You have the privilege of filing an answer within ten days after service of notice of hearing and copy of complaint upon your clients.

Mr. Schullman: That is correct. Now I am asking for additional time which, incidentally, the courts grant in such situations where new counsel gets in a case. This isn't [33] a one or two-month's delay. Apparently the ten days in which they have been served hasn't been exhausted. All I am asking now is a reasonable time—not more than ten days—in which to file an answer.

Trial Examiner Kent: Let's look at it realistically. I assume that all of you gentlemen have represented clients in labor board matters before. You are generally familiar with our procedure.

Mr. Schullman: But not with the facts. I am not familiar with the facts involved. I think I am entitled to get familiar with them.

Mr. Nicoson: Your Honor, I don't agree with all that has been said here at this time. So far as the Company is concerned, I think the notice to them is adequate. They have had since around about February 14th, which is nearly a month ago, to meet this.

The amendments to the complaint have not been substantial. They have been merely clarifying the issues drawn. The issues now in this complaint are exactly the same as those in the original complaint.

So far as notice to the Company is concerned,

I am quite positive that it is adequate. I am prepared to prove that the so-called Mr. Durant, who was absent in Washington, actually and personally signed the notice of hearing in this matter at his home in Pasadena. I am prepared to prove [34] that.

Mr. Collins: I will stipulate that.

Mr. Nicoson: You said he was here for an hour.

Mr. Collins: He went from here to Las Vegas to get married.

Mr. Nicoson: I don't care where he went and what he went to do. He still had notice of this hearing in ample time. If he wants to go and get married and let this lawsuit go by the Board, that is Mr. Durant's business; it isn't mine.

Mr. Collins: Have you served Marion Jenks in Hawaii?

Mr. Nicoson: I don't care about Marion Jenks.

I am not opposed to a short postponement in this case. I would stipulate to a postponement of a week. I am agreeable to that, and I would consent to it. But anything longer than that I would be opposed to.

I think that, so far as these unions are concerned, if there has been a dereliction it perhaps has been between attorney and clients. I don't want to delve into that too much or point any finger. I happen to know of my own personal knowledge that these things have come to the attention, at least, of some attorneys, and I am prepared to prove they have come to the attention of the union.

Since I notice by my return receipts that two of

the receipts did not reach the unions until the 25th, which gives the gentlemen some basis for objection to proceeding, on [35] that basis—

Trial Examiner Kent: Yes, they are entitled—

Mr. Nicoson: —they are entitled to further time. I am not objecting to a further postponement of a week in order to correct that discrepancy.

I am objecting to a postponement beyond that because, as the evidence in this case unfolds, we will be able to show quite definitely that one of the schemes of all these unfair labor practices is to delay, delay, delay the Board proceeding. [36]

For one, I am stating quite frankly here, before all counsel and before all representatives, that so far as the Board is concerned and so far as I, as an agent of the Board, is concerned, I am going to do all in my power to cut down any delay or any expense of time in the prosecution of this case.

Mr. Schullman: Mr. Examiner, I want to correct the record. I presume that counsel, Mr. Nicoson, is not referring to me as having knowledge of this before this present session.

Mr. Nicoson: That is right. I didn't know you were going to be here until today.

Mr. Schullman: Neither did I. I understand there is an amendment. This amendment involves my clients that were not parties here before, which changes the legal picture a little bit.

Trial Examiner Kent: Yes. That amended complaint, however, is dated February 20th.

Mr. Schullman: I am talking from the date of service.

Trial Examiner Kent: And service by mail was supposedly had on February 21st. Subject to Mr. Nicoson's statement that service was not had upon two of the parties until—what was that date?

Mr. Nicoson: 25th.

Trial Examiner Kent: The 25th. So that would seem to entitle those two parties to further two days. Of course, if they were getting it the logical thing to do would be to [37] grant it to all.

Mr. Schullman: As a matter of law, where you bring in additional parties and they are all tried in one litigation, the entire matter must go over. You can't try it piecemeal.

I think everybody is interested in getting into the facts; I know I am. I don't know a thing about this yet. I don't think a week will be sufficient so far as I am concerned. I don't see how I could possibly do it. I don't know in what respect my people are charged, where they come in. I haven't read anything yet.

I would like to ask, first, before anything is set, so far as my clients are concerned, for a period of 10 days in which to file a response or answer. I would like to have it set normally. I don't think that is undue delay. Undue delay is where we have been involved, where months elapsed, where no hearings were held. I think a week is a too quick a period to attempt to marshall all the issues involved, especially when there is no injury done. If an unfair labor practice is established, the Act itself gives complete remedy. Anybody affected thereby will be compensated for that unfair labor practice.

Trial Examiner Kent: There is an injury to the public. The Board expends money on these hearings. I would be out here without anything to do. I think the parties ought to consider that. There is a distinct public interest, I [38] think, on the grounds of the expenditure of public funds. We should co-operate and dispose of these matters promptly and expeditiously.

Congress, of course, in passing its Act thought five days was ample time for the parties to get their answer in. They don't have to answer. They can come in and orally participate. They are privileged to file the answer. The Board extended that five to ten days. So I don't think, in fairness to the parties that have urged this, they are unduly harmed.

I grant, if any attorney is tied up in another lawsuit at the time of the day of hearing, a short adjournment might be granted, but in this particular type of case where we have so many parties it is going to be almost impossible to set any day that will be mutually satisfactory to all of you.

Mr. Stevenson: I don't think that is true.

Trial Examiner Kent: I think, since there are so many AFL parties in here, you gentlemen ought to get together and do something to expedite this. The interests of all the unions is substantially the same in this case. I haven't read the complaint. I read the original one and I assume from Mr. Nicoson's statement the general issues and the amended issues are the same in the amended complaint. Let's be fair and realistic about it. Mr.

Nicoson said he didn't object to a week's adjournment.

Mr. Stevenson: I want to ask Mr. Nicoson——

Mr. Nicoson: If I may make this statement: I am willing to agree to postponing the hearing until the 18th of the month; no longer.

Trial Examiner Kent: One week?

Mr. Nicoson: The 18th. That is a week from this next Monday.

Mr. Stevenson: You say let's be realistic. All right, let's be realistic. He is talking about a week. This hearing will probably take two weeks of solid time. I am guessing at that. It may be a week, 10 days or three weeks.

Mr. Nicoson: I wouldn't go for three weeks.

Mr. Stevenson: Just a minute.

Mr. Tyre: We have heard from all these——

Mr. Nicoson: I withdraw my offer to agree to anything.

Mr. Stevenson: I don't care. I am not so particular whether it is agreed to or not. Let me continue for a moment, if I may. Every one of us have court calendars.

You tell me, or let Mr. Nicoson tell me some possible manner in which you can jam a case on an attorney here and say, "We want you to be present every day for two or three weeks," with this calendar, when you do it in 10 or 15 days.

I tell you what can be done very easily. Every one of these attorneys here, I believe, can be here from, we will say, the 7th or 8th day of April on

for three weeks and cross it off our calendar. There isn't a single attorney [40] representing any union here that hasn't a calendar made up ahead for at least three or four weeks to a month. Every one of us can be here. We will take three weeks and cross it off our calendar and say, "That is for the NLRB." On 10 days' notice what are we going to do with the cases pending in court during that time?

I personally have my own problems. Mr. Garrett has his. Undoubtedly Mr. Collins has his. But no lawyer is going to be able to sit here for two or three weeks, unless you give him 30 days and let him cross the dates off his calendar. What harm will that do? Talk about a week's continuance or 30 days' continuance. I have seen these things go on so long I have gotten grey haired from it. From April 7th, speaking for myself, I would be available. Mr. Garrett says that is agreeable to him.

Mr. Schullman, does that fit your calendar?

Mr. Schullman: Yes.

Mr. Stevenson: Mr. Collins?

Mr. Collins: Yes.

Mr. Stevenson: We will take the three weeks and cross it off our calendar. [41]

Trial Examiner Kent: How many of you gentlemen filed a motion or requested a continuance from the Regional Director prior to the opening of this hearing?

Mr. Collins: Mr. Examiner, the rest of them have never filed one. I was the only one that did. I had no knowledge at all of it myself. My people

are in Washington, D. C., some of them, and some in Hawaii. I called Mr. Meacham and asked for a continuance, and he told me that I would have to make a showing the same as I would in court, to prepare and file a written motion, which I have done. I think Mr. Nicoson was agreeable to the 18th until some representative of the CIO asked him not to do it. I think we are entitled to some reasonableness about this thing, and I haven't had an opportunity to sit down with my client and even read the complaint, even the original one. We haven't even had a chance to confer with our clients.

Trial Examiner Kent: I assume for some of these people two days would be short notice.

Mr. Collins: My people have not even been served yet, some of them. Marion Jenks is in Hawaii. She has all of her money tied up in this concern and she is working in Hawaii as a stenographer. She is entitled to be represented here and have her day in court.

Mr. Garrett: I am going to say that I do think in regard to my clients maybe they haven't even received the notice. I assume that the Carpenters may have one. [42]

Trial Examiner Kent: Oh, no, I am quite sure your clients had more than two days. Mr. Nicoson stated for the record and showed the affidavits of service, showed that there were two—

Mr. Garrett: My claim is I ought to have three weeks to prepare my case. I have not been privy to any of that. I don't even know just who represents who at the time they hire me to go into this

for them. I know that there is a charge made against the A. F. of L. Union that I represent, and I had less than six days to do all the work of preparing. I never had anything to do with all the negotiations that apparently went on between the Metal Trades Council and the rest of the local unions and the company. There may be talk about several things, and I don't have any proof of those negotiations and don't know what was going on, didn't know there was a contract, hadn't had an opportunity to read the contract, didn't know the facts in regard to it, and the fact of the matter is I didn't know the CIO had been served here and didn't know about the election. The representatives of two of my clients just came in this morning to me, and I am in here now because we got a wire from San Francisco yesterday, and my people haven't even put an answer in the case. They were only served the 25th. This is a case which looks to me like it is going to be one which will start, this trial is going to take a long, long time. The reason it will take a [43] long time is because there are going to be a lot of charges and counter charges thrown around and there is going to be a lot of newspaper publicity. There isn't a lawyer in this room, in my opinion, on the A. F. of L. side that could properly prepare his case without three weeks of steady work on it, keeping at it day after day. I don't think it can be done, and I want to call your Honor's attention to the fact that it is not so much the question of what—

Trial Examiner Kent: Why do you say that? Did you spend any time preparing for this hearing?

Mr. Stevenson: I came over here once last week with the second amended complaint, which had been handed to me the day before. Mr. Examiner, I don't think all the attorneys—now, this is not anything serious, this delay of this period is not serious. All the attorneys will take the Monday after April 7th. The reason we set that date is because during the week ahead, April 1st to April 7th, I have to leave here for Seattle and be in court there from the 1st to the 7th, at a conference in Seattle at which all of the unions have to be present, all of the Teamsters, and Monday after April 7th we will just cross off our calendar enough time to go straight through this hearing. It seems that that will take care of the engagements which we have, and Mr. Collins then would be ready to go ahead the same as Mr. Schullman can be, and it will allow us some time for preparation in the meantime. [44]

Mr. Garrett: Furthermore I believe one attorney connected with the one organization that was in here originally, representing the A. F. of L. Council concerned who conferred with the Board's counsel is not here. There is where we could get our help. There is where you have a man who has some familiarity with the situation.

Trial Examiner Kent: What do you mean, where is he?

Mr. Garrett: I talked with him myself last week. He was not able to be here for this case.

Trial Examiner Kent: He is still generally representing the Metal Trades Council, isn't he?

Mr. Garrett: I suppose he is.

Trial Examiner Kent: You don't know? Now I am just asking that question for my information.

Mr. Garrett: I suppose he is.

Trial Examiner Kent: If you can't get him, the affiliated A. F. of L. Unions will be in default, if we have to dispense with him, in view of his official position?

Mr. Garrett: No, they are not. The Metal Trades Council is not a party. There is nothing to compel him. But he represented the Building Trades Council. We can't compel him to come.

Mr. Nicoson: Your Honor, may I be heard about that?

Trial Examiner Kent: Yes, surely.

Mr. Nicoson: Just to get my name in the record around [45] here. The first complain did allege a contract with the Los Angeles Metal Trades Council, but after we had obtained a copy of the contract, and the contract in the course of the hearing I am sure will be introduced in evidence and I am sure that the parties to the contract will not disagree with me in this statement, that the contract itself makes no reference to the Los Angeles Metal Trades Council. It makes reference only to the individual locals who have been joined here in the second amended complaint and who are signatories to the contract. After that contract the Los Angeles Metal Trades Council did not appear, either as an overall representative or in any other capac-

ity, and the contract does not purport even on its face to be with the Los Angeles Metal Trades Council. Therefore, when we found this out, we amended the complaint and therefore the Los Angeles Metal Trades Council is joined with the individual unions party to the contract. In my opinion the Los Angeles Metal Trades Council has no business here, unless it comes in on behalf of the individual unions that are parties to the contract. Certainly the Los Angeles Trades is not a party to the contract and could not be properly so joined, and that is the reason it was dropped. Now we are back here to where we have certain unions, each one of which was a party to the contract, or which we are at least asking to join in this proceeding. [46]

Mr. Stevenson: April 7th is satisfactory to everybody.

Mr. Tyre: Now, Mr. Chairman, are you interested in hearing from the charging union on this thing?

Trial Examiner Kent: Yes, I am interested.

Mr. Tyre: We have a bit of interest in this case and I think our interest in the case ought to bear considerable weight with the Examiner, despite the voluminous talk, and there are a few matters of which we would like to inform the Examiner.

First of all, last October, and we are prepared to prove this if necessary, representatives from the Mounters Union, and other representatives from the Stove Moulders Union, another representative from the Teamsters' Union, another representative

from the International Association of Machinists and another representative from the Carpenters' Union had their meetings with the company for the purpose of working out an election at the company involved in this proceeding. It was agreed among all of those representatives that instead of putting each of them on the ballot they would go on the ballot as the Metal Trades Council, merely for the purposes of having a single A. F. of L. Union on the ballot. Actually the interested parties at that time and at all times since then have been each of the unions which are now represented individually by counsel. Therefore when the complaint was served upon the Metal Trades Council, it was not served upon [47] the Council as a separate entity, but as a representative of all of these separate organizations. If those unions did not contact that Council immediately upon being informed of the proceeding, I don't think the CIO should be prejudiced by that. As far as the time element is concerned, since the complaint was issued they have had adequate time to prepare a defense. Let us point out to the Examiner that in this state counsel is permitted five days in which to appear and answer and for oral argument on an injunction proceeding. Mr. Stevenson has stated that he has two important matters in San Diego and in Santa Ana, on injunction matters. The injunction, I presume, is against a strike. There can be nothing more important, as a rule, than an injunction against a strike, and yet in those cases the State of California only permits five days to answer and

to appear and argue orally against the injunction proceeding.

Mr. Stevenson: Pardon me. That is not a correct statement of the law. I have found this, representing the unions in injunction matters—

Mr. Garrett: I am surprised by that statement.

Mr. Tyre: The time to appear is five days. Under certain circumstances if counsel within five days ask a reasonable continuance, that is on occasions granted, but not outside of one week.

Mr. Stevenson: That is not correct. [48]

Mr. Tyre: If I may continue my statement without being interrupted, Mr. Examiner, it so happens it is of the utmost importance that this matter be preceded with so as to be out of the way. It has been stated here that the CIO was consulted before the date was set for the hearing. May I state to you at this time that I was not advised when this matter was going to be set, in fact, the first time that I heard it was when the Steelworkers advised me that they had received a notice of hearing, and I was not consulted at any time regarding the setting of this hearing prior to the time that notice was served upon the union. It so happens that in this case, Mr. Examiner, these unions which are now present, notwithstanding the fact they were not at any time certified as collective bargaining agents, have now made contracts which were prepared during the past few weeks with the companies herein involved. Pursuant to that contract a notice has been posted on the board under which employees who do not become members of these A. F. of L.

Unions are to be discharged. Apparently that has not yet been carried out, but it is threatened to be carried out probably within the next week or two, and therefore time is of the utmost essence. We do not have here, incidentally, any cases, at least not in this proceeding, of individual discharge cases where we have to go into the entire background of the individuals and what not. We have here simply a case of the [49] company assisting and otherwise engaging in support of labor unions and entering into a collective bargaining contract. We do not have a case of a single individual discharge involved.

Trial Examiner Kent: You have mentioned an election. Was an election held?

Mr. Nicoson: Yes.

Trial Examiner Kent: Was that pursuant to a formal hearing or a consent election?

Mr. Nicoson: A consent election.

Mr. Tyre: A consent election between the parties here present.

Mr. Collins: No, there has never been an election held at any time. However, the Pioneer Electric Company and my clients are willing to have a consent election held there, most willing.

Mr. Nicoson: I don't agree with that statement. We are prepared to prove to the contrary and we will before this hearing it over.

Mr. Tyre: The point is, this is not an ordinary matter that can go over until April 7th. It is very important to have this matter decided and out of

the way, and I am asking at this time that there be no continuance.

Mr. Collins: If counsel's statement is to be taken as true, that we are going to fire a lot of people according to [50] our contract out there, there would certainly be a complaint filed before this tribunal for discharge for unfair labor practices.

Mr. Stevenson: If that is the only reason we are not going to get a continuance, we can readily stipulate, each of the unions concerned, that there will be no attempt to enforce the terms of that contract with respect to discharge. I think everybody understands and everybody knows there has been nothing done of that sort and we are not looking for an opportunity to take any undue advantage. We want a chance to prepare it, and that it all.

Mr. Tyre: There is one other point I neglected to call your Honor's attention to, which is quite important. Two of our witnesses and two of the very important witnesses who will appear for the charging union must be out of town also on important matters, commencing the latter part of this month almost to the beginning of May, and I say that if they have to be out of town and the hearing is to go on at that time, they will have to be substituted or they will just have to remain. It is just impossible in a matter like this, where there are so many counsel involved and so many parties, to have hearings to meet everybody's convenience, any given date. This date has been set. It is important to have it out of the way. We think time is definitely of the essence. These people have had advance

notice, at least two weeks, and there [51] ought to be no dilatory delay. The trial of this case ought to proceed at this time.

Trial Examiner Kent: When will your witnesses be back?

Mr. Tyre: That is unimportant, when they will be back.

Mr. Schullman: It is pretty apparent that this is getting to be a discussion of the merits rather than a ruling on a formal motion. We can't answer on the merits without having a hearing. I know of cases involving unfair labor practices which were carried forward for long periods of time, when some matters were involved in them which were perhaps making more unrest than in this case, so their insistence on an immediate hearing seems to me unusual. However, I think that the time that has been requested is a reasonable time. I think if the case went over—what the Examiner wants to hear is the facts. These are just statements made by attorneys. The Board counsel is not a witness, neither am I, and I think that when the facts are adduced—I don't even know whether my client is guilty or not, I don't know anything about it, but I say this, it is still true of an NLRB case that it more important to get the facts in properly than it is to have it move speedily, because we are not going to take advantage of that momentary advantage. I think that the request which is made is a reasonable request. I think the time element there is short enough to allow all of us to be prepared to go ahead and conclude the matter [52] finally, and

I again reiterate, the request of the union is that the case be set for April the 7th.

Mr. Garrett: May I make just this one suggestion, then I won't have any more to say. I think the Labor Board should not adopt a policy of forcing litigants to trial before they have time to prepare. I would suggest that it is not the hearing in this case that determines the rights of the parties, it is the order of the Board. I had occasion to talk with Mr. Nicoson only last week about a very similar C case, the Allied Plastics case, which was heard here between the end of March and the first day of May, 1945. The intermediate report was issued about the first of August, 1945, and there is no order made by the Board in that case yet. The Board has not even set oral arguments in Washington yet. It is silly to say that we ought to be brought to trial within a week in order to determine a matter, when everyone knows the trial is not what determines it and everyone knows that the final order of the Board in this case will not come down for many, many months, if this case follows the usual course of cases in the handling to the order. Cases have to be deferred for handling, under the present exigency which we know exists in Washington.

Trial Examiner Kent: Well, of course, what primarily disturbs me, looking at this matter realistically, you gentlemen are familiar with our procedure; why didn't you take some [53] action in the last week before this think was set for hearing for a continuance and raise your grounds.

Mr. Stevenson: I didn't even know that I represented these people myself, as a practical matter.

Trial Examiner Kent: You knew you would. Your client certainly had knowledge.

Mr. Stevenson: No, the first that I ever heard that I was actually going to be in this case was this morning. I am retained by the Carpenters, but they did not notify me of the hearing at any time before that. Apparently they thought the matter was being handled by the Metal Trades. I haven't got any authority from the Carpenters yet. I made an appearance here for them because I am on a regular retainer from them, and when I see that they are not represented, if I find out or if they tell me, if they give me the complaint.

Mr. Nicoson: Well, your Honor, I would not agree to postpone the case to April 7th. I would certainly object to a postponement beyond one week from now.

Mr. Stevenson: It is absolutely impossible for us to get ready in that length of time. Could not be done, as far as I am concerned, it just could not be done. I have cases set in the Superior Court. There is no way in the world I can be in two places at once, and I believe that the Board ought to set—

Trial Examiner Kent: When is your case set?

Mr. Stevenson: I have one in San Diego, I have to go down to San Diego now, and I have to go down to Santa Ana for the first time on Friday. It is an injunction matter. There is a preliminary injunction issued, and I have to go down there and

get a continuance of a few days, and I would have to go down there again when the case is set, to Santa Ana again. It just is not reasonable to expect all of these attorneys to drop their whole calendars and sit in here for two or three weeks without any notice. If the matter is set for the Monday after April 7th, every one of these men can see that they will be here, they can clear their calendars. That is sensible and logical.

Trial Examiner Kent: In view of the number of parties, as I see it, I do not see that it is possible to agree upon any date that would be mutually responsive to all of you. I think Mr. Nicoson's suggestion is sufficient. He simply stated he would object to any continuance over a week. I think that is very liberal. If this is postponed definitely until a week from today, I think you gentlemen will have ample time to prepare and make some arrangement to proceed. I would say to you if you are on another matter, you won't be foreclosed from cross examining witnesses, if you have to be out, if you have any testimony that you have missed, you will be given an opportunity to cross examine. I will bring the witness back, have the witness brought back and you can [55] cross examine later.

Mr. Stevenson: Your Honor, this injunction case in Santa Ana there on the merits will take a week or maybe ten days. It is on an injunction which is already issued, a preliminary injunction at Santa Ana, and you have an idea what the length of time will be. It is just impossible to be here.

Trial Examiner Kent: Let's be a little fair. The

government is merely trying to get the facts and all the facts. A number of you gentlemen represent the same union, your interests are substantially the same. You could either, I think, rely upon one of your fellow counsel representing an A. F. of L. Union, or get some other counsel from your office, if you find that you can't be here any of the time during the injunction matter. Maybe it won't come off as scheduled. That may go over.

Mr. Stevenson: No, there is no chance. It is set in the Superior Court.

Trial Examiner Kent: I will adjourn it for one week, and I think that you gentlemen then can make some arrangements to—

Mr. Schullman: Mr. Examiner, may I state on behalf of my client I will be forced to move—to take it up with the NLRB in Washington, not necessarily only locally, but I will move formally in writing, because my calendar will not permit me to be here. I have another matter scheduled for [56] March 14th, one that has been set for the trial and I am prepared to give up all other demands. I do not think it is doing equity, in view of the facts that have been explained to you, to grant a week's adjournment and expect a frank, full and complete preparation of a case of this nature. I don't think, especially in view of the Examiner's remarks that it is proper to expect attorneys to prepare in this short a time. For instance, I know nothing whatsoever about the clients or the circumstances or the facts, or Mr. Garret or Mr. Stevenson know nothing

yet about our clients' situation in this. I do feel very definitely we ought to get the facts right from our clients, to speak with our clients. We cannot be prepared on a matter that involves the NLRB in a case of this kind without first permitting me to file an answer and second, giving me an opportunity to adequately prepare the case, unless it is the intention of those who are the charging parties, I don't know if it is their intention but I certainly know that you do not so intend, that we do not be prepared to meet the issues. The Examiner is more interested in getting the truth of the issues than a quick decision. Incidentally, you won't get a quick decision, the Board has to rule, so let us not fool ourselves. Let us not say, "Let's move into this and hurry it up and the Board and everybody else will be quick in their decision." That isn't done in a rush. Instead of getting a record here which [57] might be attacked on the question of the unions' lack of due process, let's solve this case once for all and get the facts before this Examiner and get a decision, so nobody can complain at least on a procedural matter.

Mr. Collins: Mr. Examiner, I would like to point out that when this matter was originally set, I had a call in the office that I represent a party charged with manslaughter. Because the date would have conflicted with the original date set for this hearing, I had to let that matter go, because of this case, primarily. You are interested primarily in having the facts in this case, and if you force us into a trial we are not going to get the facts. We have got to

have a chance to talk to our people and get those before we go to trial. We haven't had an opportunity to do that, and I have not even discussed this case with some of my clients yet.

Trial Examiner Kent: Have you anything further?

Mr. Nicoson: Nothing further, except I would like to have you direct your attention to the fact that there are subpoenas outstanding against Daniel P. O'Keefe, William J. Durant, and I would like your Honor to either issue new subpoenas therefor or order that those subpoenas be continued until the hearing of the case.

Mr. Collins: For your information, we can have a stipulation that I can have either one of the gentlemen on call [58] and in thirty minutes will be able to have them down here.

Trial Examiner Kent: Very well. The record will so show.

Mr. Schullman: I think that we are not being granted an opportunity for defense, merely for the sake of satisfying counsel for the NLRB, who has asked many times in cases in which they were not able to go ahead for time.

Trial Examiner Kent: It seems to me like a misunderstanding. You gentlemen are lawyers, your clients were duly served. Why didn't they get in touch with you? Why do you have to come in at this late stage of the game, the day it is set for hearing, and try to get a continuance? Counsel for the respondent, apparently, was the only one who

did make any attempt to get a continuance, and he contacted Mr. Meacham.

Mr. Schullman: Your Honor, laymen don't always get the significance of these technical things. You are speaking of technical law. My clients were not served with sufficient notice that the hearing was to be had on an amended complaint, where they are for the first time made parties, as I understand it. I would like sometime to check the records of the NLRB, and I would like to know when you set a case earlier than 30 or 60 days after the complaint was made, because it has always been the practice that it can't be set before that.

Trial Examiner Kent: Oh, no, 90 per cent of the cases, [59] I would say 95 per cent of the cases are set for hearing and the hearing proceeds on the day that it is noticed for hearing, which is probably about 15 days, ordinarily. Well, this 90 per cent may be wrong. I would estimate 60 to 75 per cent of our hearings are held within 15 days after the complaint issues.

Mr. Schullman: May I suggest to other counsel that I intend to file a motion for continuance, and unless the Examiner states that he may give me a sufficient time on that, I think we would like to ask that it be ruled upon in Washington, because if that is not ruled upon counsel will be subject to a claim of lack of due process, and under those circumstances you will not have a record here.

Trial Examiner Kent: You can appeal from my ruling.

Mr. Schullman: We are not going to appeal after the decision, we are going to appeal—

Trial Examiner Kent: Oh, no, you can appeal now. I will grant you an adjournment of one week and you can appeal from my ruling to the Board, my ruling now.

Mr. Stevenson: Well, I think this statement is only fair to you, as far as we are concerned. I don't know what Mr. Schullman's position is. Giving a week's continuance will simply throw me into a situation where on the 15th or on the 13th I am starting trial, and it is impossible; so as far as we are concerned if we cannot secure a continuance—I want [60] to put this in the record now, that each of the counsel from the various unions have agreed that they will present themselves here with a clear calendar the first Monday after the 7th, whatever that date happens to be, on Monday morning.

Trial Examiner Kent: That is Monday what?

Mr. Stevenson: The first Monday after the 7th. I think the first comes on—

Mr. Nicoson: It comes on Monday.

Mr. Stevenson: It comes on Monday, and the 7th would be on Saturday. As far as I am concerned, I will be prepared and ready to go with a clear calendar on that date.

Mr. Garrett: That would be the 8th, Mr. Stevenson.

Mr. Stevenson: The 8th, that Monday. Unless we can get a continuance of that length of time, so far as the Teamsters are concerned, we will simply have to withdraw and stand upon our right of due

process and stand upon our right for a continuance to prepare our case.

Mr. Garrett: I will have to say for your information I believe it will require three weeks to prepare the case for my clients, and if I am not granted the time necessary to prepare the case, I very seriously doubt whether my clients will be able to proceed.

Mr. Collins: On behalf of the respondents I want to state they will be prepared to go to trial on April 8th, and I will have an opportunity to check with my clients by [61] registered mail or by telephone and see whether I represent them and find out who I represent, and be able to represent them.

Mr. Schullman: Your Honor I think will admit by that we certainly should have the time in which to prepare. If both litigants are going to be able to come in and present their facts as clearly as possible, the time in which the preparation has to be made is inequitable and unfair to any of us. I certainly can't prepare properly in less time, but on April 8th I will be ready to represent Local 792.

Trial Examiner Kent: Off the record. [62]

Trial Examiner Kent: Which were the two parties on which there were two days' delay on service,

Mr. Nicoson?

Mr. Nicoson: The Refrigerator Fitters United Association, Local 508, indicated by the return receipt that they received it on February 25, 1946.

Your Honor, this particular receipt that I now have before me, I will have to check back against

the original filing. But it has been signed by the International Brotherhood, by K. Davenport on the 25th of February.

Mr. Garrett: Do you have the service on the Carpenters there, Mr. Nicoson?

Mr. Nicoson: The return receipt hasn't been sent back yet.

Mr. Collins: Do you have all the respondents' return receipts there, Mr. Nicoson? If not, which ones don't you have?

Mr. Nicoson: For the last one we have none from Marion Jenks, Lewis M. Boyle. Those are the only two that haven't come back as to the second amended complaint and order postponing the hearing.

Mr. Garrett: Do you have anything that indicates service on the Stove Mounters or the Moulders?

Mr. Nicoson: As to the Mounters, they received theirs on the 22nd at San Francisco.

Mr. Garrett: At San Francisco? [63]

Mr. Nicoson: Yes.

Trial Examiner Kent: The Mounters, Moulders and Foundry Workers you appeared for?

Mr. Garrett: That is right. On the Moulders, do you have the return?

Mr. Nicoson: On the 23rd.

Mr. Garrett: That was Saturday following the 22nd, a holiday.

Mr. Nicoson: That is correct.

Mr. Garrett: Who signed for that?

Mr. Nicoson: Hayes.

Mr. Garrett: H-a-y-e-s?

Mr. Nicoson: Yes. Let me correct my statement to Mr. Collins a moment ago. I have one for Marion Jenks signed by H. Norden on the 23rd.

Mr. Collins: Where did you mail it?

Mr. Nicoson: 511 North Muirfield Road, Los Angeles.

Mr. Collins: She is in Honolulu.

Mr. Nicoson: You can't tell it from this.

Mr. Collins: I don't know who Norden is.

Trial Examiner Kent: Then it was the Refrigerator Fitters United Association, Local 508, and what was the other one?

Mr. Nicoson: We think it is the Carpenters.

Mr. Garrett: That fits in with the information they [64] gave me, and my office stamp, too.

Trial Examiner Kent: The majority of the parties all seem to have been served, but according to the copy of the file I have, the Trial Examiner's copy, with the pleadings in, there are no answers. Were any answers filed by any of the parties?

Mr. Nicoson: No answers were filed by anyone.

Trial Examiner Kent: So most of you stand at default. Of course, we don't have any procedure for taking defaults in the matter.

Mr. Collins: I offered to file an answer.

Trial Examiner Kent: I can't understand it. I assume some of you gentlemen have a practice before the Board and are familiar with our procedure. The rules specifically provide under "Extension of Time for Filing," that is, an answer, "Upon his own motion or upon proper cause shown by the

respondent, the Regional Director issuing the complaint may by written order extend the time within which the answer shall be filed." We just ~~don't~~ seem to have a lot of procedural defects here.

[Corrected on page 80—printed record page 284.]

Mr. Nicoson: Let the record show Mr. Collins has just handed me the respondents' answer, an original and five copies.

Also let the record further show that prior to the hearing he gave me a copy of the answer.

Trial Examiner Kent: Of the what? [65]

Mr. Nicoson: He gave me a copy of the answer. I am content to accept this as proper filing at this time, of the answer.

Trial Examiner Kent: In view of the procedural defects on service, which Mr. Nicoson admits involves two of the parties, we are not in a position to proceed, of course, this morning.

I will treat Mr. Schullman's motion for further time to answer, but I think five days is ample time. I request all parties who are going to file an answer, to file an answer within five days from today with the Regional Director.

Mr. Garrett: We have five days then for our clients, each of us, from today?

Trial Examiner Kent: To file an answer. That is a courtesy. You gentlemen should have taken some steps to remedy these things earlier. Since it hasn't been done and since I indicated that the case would go over a week, I am disposed to permit the answers to be filed with the Regional Director within five days from today.

Mr. Schullman: May I ask especially for two more days? It isn't the time element. I won't be able to get to anything, in any case, until Monday.

Trial Examiner Kent: The hearing will be adjourned, as I indicated before, for a week. If you bring it in the morning of the hearing it will be received then at that time. [66]

Mr. Nicoson: As your Honor has pointed out, we don't default for failing to file an answer, so I will agree to that.

Do you want to fix a date certain?

Trial Examiner Kent: Yes. That will be Tuesday, March 11th, the fifth day. What is the rule here? You don't count the first day?

Mr. Nicoson: That is correct.

Trial Examiner Kent: You start with the second day, and the last day is included in the five days?

Mr. Nicoson: Yes.

Trial Examiner Kent: So the answer should be filed with the Regional Director by the 11th. That will at least get the matter in issue. It should have been in issue by today. But in view of the inability to proceed, I don't suppose we are seriously prejudiced.

I personally am not so sure that the service is defective. Is it the date of mailing that counts, rather than the date of receipt? That may be a matter of local practice again, too.

Mr. Nicoson: I don't think I do agree with you on that. I think the actual receipt of the notice is evidence—

Trial Examiner Kent: I think that would be fair, at any rate. If notice was delayed for eight or nine days now, it certainly would be grossly unfair to expect a man to come through with an answer in one day. [67]

Mr. Nicoson: That is right.

Trial Examiner Kent: That, at least, will give you an opportunity to file an answer.

I think in view of the number of parties—there have been statements made here that the unions were remiss in getting in touch and retaining counsel. I don't see any excuse for that. The Board has been functioning now for a number of years. I certainly think that union representatives ought to know what they are going to do and not get us into a position like we are in this hearing.

Mr. Garrett: We always have that trouble in the AFL. It is to some extent due to the rather complicated organization of the AFL. There is always a superior, there is always a superior council involved in these cases. It may be the Building Trades on the one hand. It may be the Metal Trades on the other. It may be the Printing Trade, on the other. There is always delay in the transmission of information between the local member unions and the councils themselves. There is always controversy about the arrangements.

Trial Examiner Kent: On the other hand, union officials and business representatives, I think, have a little more general knowledge of procedural matters, especially with government bureaus, than a layman would. You know they are not entitled,

if they are remiss, to the same courtesies that an ordinary layman might be. [68]

Mr. Garrett: You have to take what I said into consideration in connection with the fact that this case, that originally the council involved was joined. Then they were dropped out, and of course, that created confusion.

Mr. Tyre: What is the date of the hearing going to be now?

Trial Examiner Kent: That is a week from today. That will be the 12th, Wednesday.

Mr. Nicoson: Isn't that the 13th?

Trial Examiner Kent: Is it? Is today the 6th or 7th?

Mr. Garrett: That will be the 13th.

Trial Examiner Kent: The 13th. That is right; Wednesday. Somebody kindly handed me a calendar and I didn't look at it.

Mr. Tyre: That will be at 10:00 a.m. again?

Trial Examiner Kent: 10:00 a.m., in this hearing room.

Mr. Tyre: Could we have an understanding that copies of these answers shall be concurrently filed with the Board and all the other parties?

Trial Examiner Kent: On the 11th.

Mr. Garrett: With all the other parties? You mean the CIO wants copies?

Mr. Tyre: That is right.

Mr. Garrett: We are not expected to serve our answers on each other, those which are not complainants here, are we? [69]

Mr. Schullman: No. I think we serve on the CIO.

Trial Examiner Kent: Five copies to the Regional Director.

Mr. Garrett: How about service on other parties, your Honor?

Mr. Tyre: The rules provide, I think, for that. The rules don't provide, as a matter of fact, for any answer to be filed by a union. The rules provide for answers to be filed by respondents—referring to respondents as the company, I guess—if time is extended in this hearing, for the purpose of other unions filing answers, I presume that the same rules apply to them that apply to respondents, which means—

Trial Examiner Kent: I think under the circumstances of this case it might be advisable to file on the other unions. The unions here are formally made parties here. Ordinarily the union is treated as a quasi party, but they are formally named as major parties in this complaint.

Mr. Garrett: I am trying to get at the practical problem. If we have to serve five copies on the Board and one copy to the CIO, and then serve copies on all the labor organizations who are not respondents, those answers will probably have to be mimeographed or at least require two or three runs of the typists.

Trial Examiner Kent: The parties may possibly waive that. [70] Do you want a copy of the answer?

Mr. Tyre: I, of course, will have to have one.

Mr. Nicoson: Your Honor, may I point out the rules do not provide for the serving of answers on anyone else except to file them with the Board.

Now, if the parties want to agree beyond the rules and regulations for service upon one another, I have no objection.

Mr. Tyre: Subsection 11, Mr. Nicoson, says, "Immediately upon filing his answer, the respondent shall serve a copy thereof upon each of the other parties."

Mr. Nicoson: The answer.

Mr. Tyre: That is right.

Trial Examiner Kent: That is the way I interpreted the rule. Here the unions are made formal parties in the complaint.

Mr. Nicoson: All right. I withdraw my remarks.

Mr. Garrett: What do you call us, Mr. Trial Examiner, respondents? The Board isn't going to make any order against us.

Mr. Schullman: There are some cases on that. The unions technically aren't respondents. I don't know what else you want to call them.

Mr. Tyre: In that case they aren't entitled to file answers.

Mr. Schullman: We are very willing to withdraw the case against them, and that is the end of our appearance. I think so far as we are concerned, we will waive serving of any papers on us. We will serve a copy on the CIO.

Mr. Garrett: The AFL organizations then will

waive service on each other, but we will all serve the CIO?

Mr. Schullman: Yes.

Mr. Stevenson: Yes.

Mr. Tyre: For the record, the service on the CIO means service on its counsel?

Mr. Schullman: That is right.

Trial Examiner Kent: Yes. I think the rules require that.

Mr. Collins: Let the record show I served the answer of the respondents on the counsel for the CIO.

Mr. Tyre: That is right.

Mr. Garrett: Are we respondents?

Mr. Nicoson: I think I can answer that. Technically they are not respondents. They are referred to simply as parties to the contract.

The complaint seeks no order against the unions in and of themselves, except that goes to the contract which the complaint alleges is illegal and should be set aside. Under the ordinary rules of the Board, and procedure, the unions, parties to the contract, are not referred to as respondents, in that no order ever issues against them except to invalidate their contract. Now, if they want to call themselves respondents, [72] why, I am agreeable. If they want to call themselves parties to the contract, I am agreeable to that.

Trial Examiner Kent: Well, I think they are formal parties to the cause.

Mr. Nicoson: They are formal parties, certainly.

Trial Examiner Kent: I imagine they were made parties in view of the consolidated Edison case?

Mr. Nicoson: That is right. I had that in mind, your Honor.

Trial Examiner Kent: I assumed when I read the first complaint and saw them formally joined as parties that that was probably one of the respondents, at least.

Gentlemen, I think the five days will give counsel an opportunity to confer with one another. I do think it will be time-saving, and I think counsel's statements were made in good faith that some were retained very recently. For that reason they weren't able to consult with fellow counsel.

I think, in view of the number of parties, it will be time-saving to give the gentlemen a few days to get together and decide which part of the case you may want to meet.

(Whereupon, at 12:45 o'clock p.m., March 6, 1946, the hearing was adjourned to Wednesday, March 13, 1946 at 10:00 o'clock a.m.) [73]

Wednesday, March 13, 1946

10:20 o'Clock A.M.

Trial Examiner Kent: Are all parties and counsel present?

Mr. Schullman: Mr. Stevenson is speaking on long distance.

Trial Examiner Kent: Who?

Mr. Schullman: John Stevenson, representing the Teamsters.

Trial Examiner Kent: Where is he?

Mr. Schullman: In the outer office.

Trial Examiner Kent: On the phone?

Mr. Schullman: Yes.

Trial Examiner Kent: We might wait then until Mr. Stevenson gets through.

(A short recess.)

Trial Examiner Kent: We will proceed.

Prior to formally beginning to take testimony there are a couple of corrections I wish to make in the transcript.

Page 42, the second line. It reads as follows:

“Trial Examiner Kent: How many of you gentlemen filed a motion in the record prior to the opening of this hearing?”

What I intended to say was, “How many of you gentlemen filed a motion or requested a continuance from the Regional Director prior to the opening of the hearing.” [78]

Mr. Collins: I did.

Trial Examiner Kent: I think I did mention the Regional Director's name. I may have talked a little thick and possibly the reporter didn't get it. On the other hand, it may have been my error. I realize generally reporters are right.

On Page 62—

Mr. Schullman: I don't have that many pages 62 of what?

Trial Examiner Kent: 62 of the first day's transcript. I will let you gentlemen examine that.

Mr. Schullman: Pardon me. I was wondering what you were referring to. All right.

Trial Examiner Kent: I refer to the remark of the Trial Examiner of "Off the record," and that is all. As a matter of fact, there wasn't any off-the-record discussion. What transpired at that time was that we took a short recess to enable me to read the amended complaint and any pleadings that may have been filed in the case. Theretofor I hadn't had any opportunity to read the amended complaint. I think that will explain that there wasn't any off-the-record discussion at that time, other than the general conference that counsel might have indulged in, that the Trial Examiner did not participate in.

On Page 65, the seventh line from the bottom, it reads: [79]

"We just don't seem to have a lot of procedural defects here."

I think the "don't" is erroneous. It should read:

"We just seem to have a lot of procedural defects here."

Before those changes are made, I will permit counsel to see that, if they haven't a copy.

Mr. Schullman: We have no objection.

Mr. Stevenson: No objection.

Trial Examiner Kent: Very well. The changes will be made as suggested.

By the way, I noted there was no appearance on behalf of Refrigerator Fitters United Association, Local 508, affiliated with the American Federation of Labor, one of the alleged parties to the contract. Is there anybody here representing the Refrigerator Fitters, and if so, do they want to participate?

Mr. Garrett: We will communicate with them later on and see what they desire to do.

Mr. Schullman: You will appear for them until that time? I think Mr. Garrett will especially appear for them and limitedly until he communicates.

Mr. Garrett: That is correct.

Trial Examiner Kent: Yes. That is all I have. You may proceed, Mr. Nicoson.

Mr. Collins: May I be heard on a motion before we proceed? [80]

Trial Examiner Kent: Yes, surely.

Mr. Collins: I wish to move the court at this time for a continuance on behalf of all respondents on the grounds heretofore stated, I haven't had an opportunity to confer with my clients. I would like to have the continuance for at least a period of 30 days.

Mr. Garrett: On behalf of the Carpenters, Moulders and the Stove Mounters, I move for a continuance of at least 30 days on the ground they have not had adequate notice of these proceedings.

Trial Examiner Kent: What is that?

Mr. Garrett: On the ground they have not had adequate notice of these proceedings, nor time to prepare their necessary part in this case. And upon the ground that denial to them of adequate notice and adequate time to prepare constitutes, insofar as those unions are concerned, a denial of due process and an unwarrantable interference with the obligations of their contract here involved.

Mr. Nicoson: These are essentially the motions made last week. I will take the same position. I am opposed to any postponement.

Trial Examiner Kent: Yes. In substance, they are the same motions, and, in effect, were denied.

I also stated at that time that, in substance, you all [81] have an adequate opportunity to prepare your defense. I will entertain a motion for a short continuance after the Board rests its case, to give the parties an opportunity for further preparation if they deem it necessary to make a showing at that time.

Mr. Collins: Mr. Trial Examiner, I want my motion to clearly indicate that some of my respondents have not been served. I said the respondents heretofore stated. I want the record here to show that now.

Trial Examiner Kent: There were two you mentioned, one lady——

Mr. Collins: I do not know which ones have not been served. I know the one in Hawaii has not been served. I have been unable to communicate with her. I don't think any of them have been actually served. I believe some of them, with the exception of Mr. Durant, some of the rest of them had various employees sign for them on this registered mail. I am not raising that as to Mr. O'Keefe particularly; we will accept that.

Trial Examiner Kent: I will hold the ruling in abeyance as to that part of the motion, until Mr. Nicoson makes a proof of service.

Mr. Schullman: Just a second.

Mr. Collins: I wish to also make the statement, for the purpose of the record, that these respondents that I represent [82] are named separately in this first amended charge and in the complaint. There has been no motion made to separate these respondents or eliminate those that are not served, from the proceeding. I believe it is a violation of their constitutional rights. I want the record to clearly state it at this time.

Mr. Schullman: Your Honor, I don't know if I can—I am not arguing for the respondents, but from a simple, pure elementary principle of law, the thing that appeals to me is this: From what I understand, respondents are named in the action. Therefore, they are necessary parties to the action.

I agree that if they had been served and failed to appear and failed to have representation, this court would be, and the Board would be entitled to proceed. One of the inhibitions against even the N.L.R.B.—the N.L.R.B. has its rules of procedure. One of the inhibitions, constitutionally, is that you may not proceed against a named respondent or party where they haven't been served, until service is effected, until brought before the form of the court.

I am not making this statement for my clients, but as an attorney and the other counsel. I think we must call it to the attention of the court, as a constitutional question.

Trial Examiner Kent: Have you any answer to make, Mr. Nicoson?

Mr. Nicoson: I feel the service is adequate, and,

as the [83] complaint indicates and we intend to prove, the parties here named as individuals are, in fact, partners to the Pioneer Electric Company. There wouldn't be any question in my mind as to the adequacy of service upon Pioneer Electric Company. If we are right in our contention and theory, in the complaint, an order issued, directed against the Pioneer Electric Company certainly would be effective, even though one of the partners may not have been properly served. After all, the partnership is here. I don't think there is even a question raised at the moment that the partnership is not properly before the Board at this time.

Trial Examiner Kent: Your contention, in effect, is, assuming there was a failure to serve one of the individual parties, it would only go to the individual right of that person, assuming that there might be a violation of that right.

Mr. Nicoson: I think that is correct, your Honor. In the event the Board, if we make out our case and the issues, if there is not proper service or one or more of the parties individually are not properly before us, the Board, in that event, could not make a valid order, in my judgment, against the absent party. The Board is not precluded in making the valid order against the Pioneer Electric Company, the partnership which is before the Board.

Mr. Schullman: Do you want me to academically pursue [84] that? I think that is an erroneous legal proposition. You see, a partnership is a fie-

tion. It exists only through the entity of the individual partners. For instance, you effectuate an order upon individuals in a partnership. In a corporation, that is a legal entity, you effectuate an order against a corporation. I can't see it legally.

Counsel admits you couldn't make a decision against them, the Board could not make a valid order against them.

Trial Examiner Kent: Against the individual.

Mr. Schullman: You can't separate them, because they haven't been served, because they might contribute evidence which will help, although they are partners, all joined together. I think you have a constitutional inhibition here, and I am merely drawing it out. Let the Board decide what it wants on it. It is a serious defect, in my personal estimation.

Trial Examiner Kent: I will deny the motion at this time, without prejudice to later renewing it.

Mr. Garrett: May it be understood that the motion for continuance of my clients will also rest upon the same grounds and the same showing as made by them in the initial hearing one week ago today?

Trial Examiner Kent: I thought you raised the other day the showing that one of your clients was the Carpenters. Mr. Nicoson seemed to concede there might be a question as to [85] whether the Carpenters did not have a full ten-days' notice. About eight days had elapsed, I believe, at the time of the last hearing.

One of the reasons, of course, of my granting a continuance was to give that party full ten days. So, I think having had it now, I will deny that motion.

Mr. Garrett: Thank you. [86]

Mr. Collins: Mr. Trial Examiner, I want the record to show that I am now appearing on behalf of those respondents who have been properly served. The answer filed by me in their absence, and without consultation of them, is for the benefit of those that have been properly served.

I wish to remove all my legal rights to object to any of these proceedings, either before this Board or later on before the court.

Trial Examiner Kent: I think I will ask you, Mr. Collins, to go a little further and state for the record just whom you are formally appearing for and whom the objection goes to.

Mr. Collins: Will Mr. Nicoson read into the record then the respondents he has served and what the method of service is?

Mr. Nicoson: Your Honor, it appeals to me it is more proper before all this question of propriety of service and so forth that I, at least, offer for the record Board's Exhibit 1, which contains all the proof of service and so forth, the formal papers, and then whatever objections they have to make to the service can be made. It seems to me if there is a defect it can be pointed out and we don't have to be going around the barn here.

Trial Examiner Kent: I wonder further, Mr.

Collins, if you shouldn't have appeared especially—

Mr. Collins: I don't see how I can.

Trial Examiner Kent: —to object to service in respect to those clients you purportedly represent, whom you claim now were not properly served.

Mr. Collins: In view of the statements of the Board's attorney, Mr. Nicoson, and in view of the proceedings here, I feel I have to stay in the case and protect the rights of these people, because this Board will go ahead and make orders whether there is legal justification for it or not. I wish to protect them as best I may. However, I wish to reserve my right to object to the jurisdiction of this Board upon the grounds you do not have proper service. I don't want to waive my rights as to service to anyone.

I have not had a chance to confer with these people and to properly prepare this case. We are forced into this too rapidly. I don't see where it is incumbent upon me to state those I do represent and those I do not, other than to say I will represent all those that have been properly served.

Trial Examiner Kent: Well, I think it may lead to more orderly procedure to have Mr. Nicoson formally introduce the pleadings and his proof of service.

Mr. Collins: I wish to make an oral motion at this time to amend my answer so it clearly indicates that I appear only for those who have been properly served, properly and legally served, in ac-

cordance with the rules of service [88] in the State of California and the federal courts.

Mr. Nicoson: I object and I oppose such a motion on the ground it is indefinite and uncertain; it adds nothing to nor takes anything from the answer.

Trial Examiner Kent: I wonder if your motion is timely. I will deny the motion, as I stated before, without prejudice, at this time, subject to it being later renewed.

You may proceed.

Mr. Nicoson: I now offer for the record and ask to have marked for identification as Board's Exhibit 1, with the subdivisions appropriately alphabetized as follows:

Board's Exhibit 1-A, the original charge filed in this matter on the 6th day of February, 1946, by the United Steelworkers, Stove Division 1981;

Board's Exhibit 1-B, the original complaint, consisting of six pages, signed by Regional Director Meacham, on February 14, 1946;

As Board's Exhibit 1-C, the original of the notice of hearing setting the hearing for February 27, 1946, and issued by Regional Director Meacham on February 14, 1946;

As Board's Exhibit 1-D, an affidavit by an employee of the National Labor Relations Board of service by registered mail, dated February 14, 1946, of the notice of hearing, complaint and charge on O'Keefe & Merritt Manufacturing Company, 3700 East Olympic Boulevard, Los Angeles, California; [89] Pioneer Electric Company, 3700 East

Olympic Boulevard, Los Angeles, California; L. G. Mitchell, 1117 Story Place, Alhambra, California; W. J. O'Keefe, 845 South Kensington, Los Angeles, California; Marion Jenks, 511 North Muirfield Road, Los Angeles, California; Lewis M. Boyle, Ojai, California; Robert J. Merritt, 111 North Las Palmas Avenue, Los Angeles; Robert J. Merritt, Jr., at the same address; William J. Durant, 1245 Wentworth, Pasadena, California; United Steelworkers of America, Stove Division, Local 1981, at 4110 East Slauson Avenue, Los Angeles, California; Stove Mounters International Union of America, affiliated with the American Federation of Labor, in care of John D. Roberts, 38 Athen Street, San Francisco, California; Los Angeles Metal Trades Council, 405 South Hill Street, Los Angeles, California;

As Board's Exhibit 1-E, four sheets marked E-1 through E-4, to which are attached United States Post Office return receipts further attesting to service of the complaint, notice of hearing and charge upon the aforementioned persons and company and union;

As Board's Exhibit 1-F, amended complaint, consisting of seven sheets;

As Board's Exhibit 1-G, an affidavit of an employee of the National Labor Relations Board of service by registered mail of the amended complaint, dated February 18, 1946, upon O'Keefe & Merritt, address heretofore given; Pioneer Electric Company, [90] at the address heretofore given; L. G. Mitchell, at the address heretofore given; W. J.

O'Keefe, at the address heretofore given; Marion Jenks, at the address heretofore given; Lewis M. Boyle, at the address heretofore given; Robert J. Merritt, at the address heretofore given; Robert J. Merritt, Jr., at the address heretofore given; William J. Durant, at the address heretofore given;

As Board's Exhibit 1-H, a document consisting of four sheets, marked H-1 through -4, being sheets of paper to which are attached United States Post Office return receipts further attesting to service of amended complaint on persons, companies just mentioned;

As Board's Exhibit 1-I, the first amended charge filed on February 21, 1946, by the United Steelworkers of America, Stove Division 1981, a document consisting of two pages;

As Board's Exhibit 1-J, the second amended complaint, a document consisting of eight pages, and issued by the Regional Director on February 20, 1946;

As Board's Exhibit 1-K, the original of the notice of hearing setting the hearing for March 6th at 10:00 o'clock in the hearing room in this building, signed and issued by the Regional Director February 20, 1946, a document consisting of two pages;

As Board's Exhibit 1-L, an affidavit of an employee of the National Labor Relations Board of service by registered [91] mail of the notice of hearing, amended charge, second amended complaint. The affidavit is dated February 21, 1946,

and a document which shows service upon International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 389, affiliated with the American Federation of Labor, 2640 South Hill Street, Los Angeles, California; International Moulders and Foundry Workers Union of North America, Local 376, affiliated with the American Federation of Labor, 405 South Hill Street, Los Angeles, California; District Lodge 96, for and on behalf of its affiliate Local 311 of the International Association of Machinists, 123 West 18th Street, Los Angeles, California; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, affiliated with American Federation of Labor, 1748 Santee, Los Angeles, California; United Brotherhood of Carpenters and Joiners of America, affiliated with American Federation of Labor, 511 South Maple Street, Los Angeles, California; Refrigerator Fitters United Association, Local 508, affiliated with the American Federation of Labor, 1417 Georgia Street, Los Angeles, California;

As Board's Exhibit 1-M, a sheet of paper to which is attached United States Post Office return receipts further attesting to the service of the amended charge, second amended complaint and notice of hearing upon the unions laterally mentioned; [92]

As Board's Exhibit 1-N, the original of the order postponing the hearing from February 27, 1946, to March 6, 1946, signed and issued by Regional Director Meacham, February 20, 1946;

As Board's Exhibit 1-O, an affidavit of service by an employee of the National Labor Relations Board by registered mail of the order postponing the hearing, amended charge and second amended complaint, dated February 21, 1946, a document consisting of two sheets attesting to service upon O'Keefe & Merritt, at the address heretofore given; Pioneer Electric Company, at the address heretofore given; L. G. Mitchell, at the address heretofore given; W. J. O'Keefe, at the address heretofore given; Marion Jenks, at the address heretofore given; Lewis M. Boyle, at the address heretofore given; Robert J. Merritt, at the address heretofore given; Robert J. Merritt, Jr., at the address heretofore given; William J. Durant, at the address heretofore given; United Steelworkers of America, Stove Division 1981, at the address heretofore given; Stove Mounters International Union of America, affiliated with the American Federation of Labor, care John D. Roberts, 38 Athens Street, San Francisco, California;

As Board's Exhibit 1-P, a document consisting of two sheets, numbered P-1 and P-2, containing United States Post Office receipts further attesting to the service of the order [93] of postponing the hearing, amended charge, and second amended complaint upon the persons and unions laterally mentioned;

As Board's Exhibit 1-Q, the answer of respondent O'Keefe & Merritt Manufacturing Company; L. G. Mitchell; W. J. O'Keefe; Marion Jenks; Lewis M. Boyle; Robert J. Merritt; Robert J. Merritt, Jr.; William J. Durant individually and as

co-partners, doing business as Pioneer Electric Company;

As Board's Exhibit 1-R, the answer of the Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, to the second amended complaint;

As Board's Exhibit 1-S, the answer of the International Moulders and Foundry Workers, Local 374, affiliated with the American Federation of Labor, to the second amended complaint;

As Board's Exhibit 1-T, the answer of the Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor, to the second amended complaint.

(Thereupon, the documents referred to were marked as Board's Exhibits 1-A through 1-T, for identification.)

Mr. Nicoson: I offer this document for the record and show it to the parties.

Mr. Collins: To which offer on behalf of the respondents I object on the ground it is not what it purports to be, that the service actually is not upon the parties but, in some cases, upon the maid and in other cases the father signed for a daughter, and various other methods of purported [94] service, without going into detail in each case specifically. As far as Marion Jenks is concerned, she has not been served at all. I object to the proceeding continuing without proper service being made on these respondents.

In line with your ruling, Mr. Examiner, that you will entertain a motion for the continuance after the Board's case, I wish to point out to you that would not give these people an opportunity to cross-examine the witnesses as they are brought forth. It is an offer that means nothing to us; absent brother. They don't get a chance to know what is going on.

Trial Examiner Kent: I am very glad to receive a brief of counsel in reference to service on Miss Jenks, and Board's counsel may also have an opportunity to file a brief to support that service.

Mr. Collins: I expect to ask the Trial Examiner for an opportunity to file a written brief at the close of these proceedings, at which time I expect to raise that.

Trial Examiner Kent: Yes. I think it raises rather a novel question. I would be very glad to receive one.

Mr. Garrett: On the exhibit which is Board's Exhibit 1-S, the answer of the Foundry Workers, Local 374, I would like to move a correction by interlineation on page 2, line 22. At page 2, line 22, the Moulders move to substitute the figures "374" for the figures "125." [95]

Mr. Nicoson: No objection.

Trial Examiner Kent: The amendment may so show. I don't suppose you have all the copies present here now. I was going to say you could physically make the change.

Mr. Nicoson: I will state, for the record, all the copies in the Board's possession already have been physically changed. [96]

Trial Examiner Kent: Very well. By the way, Mr. Nicoson, you will note the other day in my order I permitted them to file answers within five days. I suggest I provided that the answer be filed with the Regional Director. My purpose in doing that was to see that the necessary two copies are transmitted to Washington for the files there. I would request that you request the Regional Director to forward them to Washington, Mr. Nicoson, to complete the files.

Mr. Nicoson: I think, your Honor, that has already been done.

Trial Examiner Kent: I thought it probably would be; that was the reason—

Mr. Nicoson: We sort of do that by routine.

Trial Examiner Kent: You people probably do that mechanically, yes. It will obviate the fact I might overlook it. For that reason I thought it was a good idea to have those answers filed with the Regional office.

Mr. Nicoson: If it hasn't been done, it will be.

Trial Examiner Kent: Thank you.

Mr. Schullman: I don't know whether it is proper to intercede now. Since you are speaking of answers, on behalf of Local 792, after a careful analysis of the Act and rules and regulations, I don't think that answers for parties named to the contract that are indicated any place. As a matter of fact, I think the only purpose—I tried to [97] read some of the history behind that—I think the only purpose of naming parties is in an event such as this, where the parties are involved, if and when

you decide to uphold or strike the contract. Since it is not indicated it would be surplusage. When we reach our part of the case we will then, by introduction, state the position of our client.

Trial Examiner Kent: I think counsel is right. It is not mandatory to file answers, having been made formal parties. I interpreted your motion as a request to file an answer the other day. For that reason I entered a general ruling that the parties might, within five days, file answers with the Regional Director. It does help to clarify and define the issues.

Mr. Stevenson: Mr. Examiner, because it is impossible for me to be present at the hearing, I would like to ask the indulgence of the Board and counsel in making a statement of the Teamsters' position and requesting a stipulation, if counsel are willing to give it. And with that, why, we will not be present further in the hearing.

Trial Examiner Kent: Yes, Mr. Stevenson. I suggested the other day in your case there were so many parties here that I could readily see that some emergency might necessitate the absence of one of the counsel. I did offer at that time, if counsel wanted to, if counsel had to be absent himself he would have the privilege of cross-examining any witnesses [98] that had been called, and I would see, for the benefit of counsel, that that witness was called back if counsel wished the opportunity for cross-examination.

Mr. Stevenson: I don't anticipate that will be

necessary in our case. I think the facts with respect to the Teamsters can be obtained by stipulation and then when those are obtained I don't see any necessity of our being here.

Trial Examiner Kent: As I see the case, the case of all the A.F.L. Unions would be based on substantially the same legal grounds.

Mr. Stevenson: There is some difference between the status of the Teamsters. I wonder if it might be possible for me to make a statement and ask if a stipulation can be entered into?

Trial Examiner Kent: I think that might suffice. And you may, Mr. Stevenson.

Mr. Stevenson: On behalf of the Teamsters' local concerned in this matter, the facts are that the drivers, driver helpers have always been members of the Teamsters organization, and that they have at all times been represented by the Teamsters organization.

Up until the first date of this hearing I think that everybody was under the impression they were specifically excluded from the original certification. On examining the original certification we did not find those specific [99] exclusions.

I would like to ask counsel to stipulate that the fact is that the drivers and driver helpers have at all times been represented by the Teamsters organization, and that the Steelworkers have never claimed representation of that particular group, nor have they ever represented that particular group either in the O'Keefe and Merritt operation or in the Pioneer Electric operation.

The further fact that the Teamsters organization signed a contract and that it has always dealt for the Teamsters concerned, that representations were made to us that the Pioneer Electric Company had taken over completely the particular operation or that portion of the O'Keefe and Merritt operation in which the Teamsters worked, and that the new operation was a complete and separate entity from the original O'Keefe and Merritt operation; that upon those representations the Teamsters organization have signed a contract with the Pioneer Electric Company.

I wonder if those facts may be stipulated to by counsel, insofar as the Teamsters are concerned, if they are. We have no knowledge whatever of the remaining facts which this Board will have to determine, which is the matter of the transfer of the O'Keefe and Merritt operation to the Pioneer Electric operation.

Mr. Garrett: We will so stipulate. [100]

Mr. Schullman: Yes.

Mr. Stevenson: Will you stipulate as to those facts, Mr. Nicoson, for the relation of the Teamsters Local?

Mr. Nicoson: I think I can stipulate to most of them, Mr. Stevenson. What representation was made to you about the transfer from O'Keefe and Merritt to Pioneer Electric I certainly can't make any stipulation that those are the facts.

Mr. Stevenson: No, we don't ask that the stipulation assume those are facts. We merely ask that a stipulation be entered into that that situation was

represented to the Teamsters and that they signed a contract. We have no knowledge as to the factual situation behind that; further than the representation that the change had been made.

Mr. Nicoson: So far as your proposed stipulation about the drivers and helpers is concerned, am I to understand that that does not include persons employed, or at the time employed in the so-called warehouse down there, just only the truck drivers and those who come under the common understanding of helpers to truck drivers?

Mr. Stevenson: I believe that the membership included—if I am wrong I would like to be corrected—those in the warehouse who loaded trucks, were actually engaged in the loading of trucks. The drivers and so-called driver helpers who loaded trucks. Just where each of them worked I don't [101] know. But those are the people who have always been in the membership and there has been no dispute on those people between the Steelworkers and the Teamsters organization.

Mr. Tyre: As far as the Steelworkers are concerned, I certainly can't enter into any stipulation at this particular moment. I would want to have the record read back so I will know exactly what the stipulation is. In fact, I prefer to have it written up at the first recess when I can go over it with my client and see how much of it, if any or all, can be stipulated to. I think that is the only orderly way I can enter into it.

Mr. Nicoson: I much prefer to do it that way,

too. I think the matter is perhaps one that can be solved. I think we ought to know exactly what we are stipulating to, if we do reach a stipulation. I think Mr. Tyre is absolutely on the right track when he suggests that we reduce it to writing.

Mr. Stevenson: We might do that. We might try to reduce it to writing. I want to make it clear that I did not intend the stipulation to include any facts as to whether actually the Teamsters were in the original certification or not.

I did say that in the contemplation of all the parties they were never included in the original certification and that we proceeded with representation of those men at all [102] times, and that at no time has there been any dispute about that representation. The actual wording of the certification may or may not bear that out.

We will endeavor to arrive at some sort of a stipulation. I am doing that because I can't see that the Teamsters organization in this particular proceeding would add anything or detract anything to the entire proceeding, and I can't see that we have any evidence that we wish to adduce beyond that.

Mr. Collins: I will accept Mr. Stevenson's stipulation.

I think, before Mr. Stevenson is excused from this hearing, that a matter I intended to bring to the attention of the Board should be discussed at this time. I intend, on behalf of the respondent, Pioneer Electric Company, to show they have been in business ever since 1942 and they have been an

entire and separate legal entity, both in contemplation of the law and in fact. I expect to show they had at one time as many as 108 employees; that they were in business before any certification was had by this Board. They have never had an opportunity to prove to the Board whether or not they signed a contract with the A.F.L., without having adequate proof to them, that is, the Pioneer Electric Company, that the A.F.L. represented a great majority. I have discussed this matter with Mr. Nicoson and some of the A.F.L. groups, and Mr. Conway of the C.I.O., and on behalf of the Pioneer [103] Electric Company, if it would shorten the proceeding any, the Pioneer Electric is willing to consent to a Board conducted election at this time, if there is any doubt as to whether or not the C.I.O. or A.F.L. are in a vast majority there. Before Mr. Stevenson gets out of this proceeding I think he ought to have an opportunity to know about that.

Mr. Stevenson: Well, as far as we are concerned in the proceeding, we are willing to consent to any method of solution arrived at between the parties which will terminate the proceeding. We won't object to an election. We won't interfere with any settlement which is arrived at. We believe that we have to represent our own people, and we intend to continue to do that, and I do not believe that there is any dispute as between us about that representation, either as to any of the A. F. of L. unions or as to the Steelworkers.

Trial Examiner Kent: I think, Mr. Stevenson, in view of Mr. Tyre's statement, that you gentlemen

might try to work out a written stipulation. There seems to be some possibility that you might be able to arrive at a written stipulation, and that might be the best way to dispose of that particular issue.

Mr. Collins: Do I understand from the silence of the parties here that there can be no agreement as to a consent election so far as the Pioneer Electric Company is concerned?

Mr. Schullman: We would agree to it, on behalf of our clients.

Mr. Garrett: I would have to consult my clients.

Mr. Reed: The Machinists would agree to a consent election.

Mr. Schullman: We will agree to it. Incidentally, while we are at it, some time before the Board finishes its presentation, for reasons somewhat different from Mr. Stevenson's, [105] I would like to make a statement. I don't think it is necessary in this stage of the case. I merely ask the right to make a statement as to my position on the record, because I also can't be here. I don't want to be sitting here just awaiting the entire government's case. I don't want to do it now, necessarily, now or later, but I will want to do it. I also feel my client—we cannot add or detract anything to the issues involved. I think when we state our position, if counsel wants a stipulation, it is there, for them to use, and those are the facts. Any time the Examiner desires and Mr. Nicoson consents, I will be glad to state our position factually and legally. We are not withdrawing from the case, but other

demands will take us away from it, so that when we are not here Mr. Garrett can proceed to represent Local 792, and you could call us on any matters which might be prejudiced by our not being here.

Trial Examiner Kent: Yes. I think in view, as I see it, of the substantial identity of the issues, so far as they pertain to the various A. F. of. L. parties—

Mr. Schullman: Pardon me. That is just not correct. The issues are not in fact precisely the same, as we view them, which will be very apparent when the Board concludes. I will be very glad to set out our position. There is a complete difference, insofar as the Painters are concerned, a complete difference from anybody else, because they were not part of the [106] original certification. They were not part of the stipulation entering into a consent election. They were concluded by somebody without authority for them, and they, as far as they are concerned, are asking that the decision—I would rather give it chronologically, and I should like to make my statement now, if the Board wants to hear it now. There is a complete differentiation and distinction in them.

Trial Examiner Kent: I see.

Mr. Schullman: Does Mr. Nicoson desire I state it now, then if I do I can leave and not burden the case any further with my presence.

Mr. Nicoson: It just strikes me, since Mr. Schullman has begun now, he ough to continue.

Mr. Schullman: In behalf of the Brotherhod of Painters, Decorators and Paperhangers, Local

792, the facts are as given by me for my clients as follows:

That they did enter into a contract with the Pioneer Electric Company, I believe in February of 1946, or more correctly, I think on February 2, 1946; that at that time and prior thereto they did represent and have as members all of the maintenance painters, consisting of five in number, and that they did have organization for a long period of time; that presently and then there has been no contention as far as we know on the part of the United Steelworkers that they have claimed or did claim or now claim the Painters as within [107] their legally constituted union; that more importantly, in reference to the alleged certification and election, at no time were my clients notified of such a pending election, that they did not participate in such election, that they did not stipulate to a consent election, and that no one whose names appear in the consent election had authority to conclude them as to the unit, and that as a matter of fact insofar as the certification is concerned, it is improper for the unit therein set forth, with particular application to my clients, and that the proper unit for my clients would be limited to the painters therein, and that for that reason, assuming that the Board might find that the contract should be stricken down, that the certification is proper and the contract should be stricken down, that the Painters have a valid and subsisting contract; and that further, at the time of entering into such contract, representations were made to them that the

Pioneer Electric Company is a different entity than the O'Keefe and Merritt Corporation; that Local 792 has no knowledge, information, or belief concerning the rest of the allegations; that they cannot add one iota to the legal issue whether or not in fact or in law O'Keefe and Merritt and Pioneer Electric Company are different entities, which is a matter from the facts which this Board or some other court may decide; that they have no knowledge, information or belief on any of the allegations set forth pertaining to an alleged [108] inducement of our contract; that in view of that we do not withdraw from the case, and when we do leave in person, any matters pertaining to Local 792 can be taken care of by remaining counsel, Mr. Garrett. May we add that we see nothing that we could add to that by way of outside testimony, any testimony which would change the legal issues involved, limited to the question of whether or not there is a change of identity, and I believe that all parties will stipulate that certainly Local 792 was no party to any of the matters alleged to have occurred. [109]

Mr. Tyre: Are you asking for a stipulation on that?

Mr. Schullman: No, I say they should stipulate. I am not asking that, because I do not want to prejudice the government's case if they don't want to stipulate now. I think those facts would appear if we put on a witness when in fact the case of the respondents is reached and the parties will adduce testimony, that the only witnesses that we would

introduce would be those who would testify substantially in the nature of the facts as we have stated in our statement of position.

Trial Examiner Kent: In other words, if you put on witnesses subsequently they would go, to the best of your information—if the C.I.O. contends that the Painters are in the present unit as named in the complaint, you might wish to put on testimony controverting that.

Mr. Schullman: Our testimony very simply would show at that time that the contract was signed under the facts and circumstances alleged and our testimony would show that the five painters belonged to the union before the contract was signed and our testimony would show that at the time of the certification this Local 792 had no knowledge or participation, did not consent to the election, did not participate in the election, and from that we would, of course, argue that as a matter of fact and law, the unit did not conclude us, and the other point would be that we do not know as a matter [110] of law or fact whether O'Keefe and Merritt can be considered the same entities with Pioneer, that representations were made as to the different entity at the time the contract was signed.

Mr. Collins: As a matter of information, may I ask the Trial Examiner, do we have to inquire of Mr. Nicoson, the Board's attorney, or do we also have to secure a stipulation from the attorney for the C.I.O. in these proceedings? I was just wondering what the situation is here when stipulations are to be made. It is the Board's case.

Mr. Nicoson: He didn't ask me, he asked you.

Trial Examiner Kent: Well, I will submit the question to Mr. Nicoson.

Mr. Nicoson: Well, since you are the Trial Examiner here, you have the right to rule on requests, motions and so forth. I certainly do not think I have any right to get in here and try to solve any questions that are put directly to you, because I know the C.I.O. is present here and represented by counsel. As far as arriving at a stipulation, you are the last judge on that, not me.

Mr. Collins: I thought Mr. Tyre, appearing as counsel for the C.I.O., was merely assisting Mr. Nicoson and aiding him in preparation of the Board's case, and I was wondering whether we have to have a stipulation with him, too. Their interest might be opposed to that of the Board. [111]

Trial Examiner Kent: No, the Board primarily represents the public interest, and the Board very often finds that the parties, the C.I.O and A.F.L. Unions might be willing to enter into certain stipulations, and the Board might very well see that such a stipulation should not be entered into. But I think probably in view of Mr. Schullman's statement it might be best to proceed to put the evidence in and see how the unit is defined by the testimony in conjunction with the statement of the unit as set forth in the claim [in pencil: complaint] as I understood it.

If you put testimony in, it might be and probably would be limited to controverting that particular part of the issue, that the painters are not prop-

erly included in the unit alleged in the complaint, and boiled down, that is substantially your contention.

Mr. Schullman: Yes, for the more important reason that they were concluded against participation by those without authority to conclude them. It seems to me we ought to have an answer and even in this instance a ruling on that.

Mr. Nichoson: I would agree to that.

Mr. Schullman: I mean, that is a mere element of the case. We merely state that we entered into a contract in good faith and, of course, we are pleading that O'Keefe and Merritt and the Pioneer Electric are not the same organization, and we can't add anything to that. That is for [112] the Board to determine.

Mr. Nicoson: It seems to me Mr. Schullman and Mr. Stevenson have made their position clear. I would suggest that we go on. I would like to inquire if you have decided to proceed with evidence. If you have, I have got two or three minor amendments I would like to offer.

Trial Examiner Kent: Yes. Very well.

Mr. Stevenson: Mr. Nicoson, would it help us any, or be any great help on this development, I have to be out of here this afternoon; with regard to my request for a stipulation, I am asking a stipulation that these are the facts and I believe they are, and could we stipulate the witnesses for the Teamsters if called, would testify those are the facts and let the record remain in that state?

Mr. Nicoson: I think perhaps I could—let me talk to my colleague. I have this suggestion, your Honor. Let me complete the introduction of the formal papers and such amendments as I would like to offer, and then I will suggest that in the interest of following out Mr. Stevenson's suggestion that the parties get off the record, either in my office or in some other place, and explore the possibilities of such a stipulation. It may be that we could stipulate. It may be that we will be unable to stipulate to anything.

Trial Examiner Kent: Yes, that might be the most advisable course to pursue. [113]

Mr. Nicoson: Since the noon hour is about here, I would like to make that suggestion, if it meets with the approval of the parties.

Mr. Schullman: That is satisfactory.

Mr. Stevenson: Mr. Nicoson, at noon time I have to leave here.

Mr. Nicoson: It is now 11:35. I think within the next 25 minutes we would either know whether we could or we could not.

Mr. Stevenson: I don't think there is going to be any controversy about our position, so I am perfectly willing to accept the suggestion, that if my witnesses were called they would testify to those facts, without you stipulating that those are the facts.

Mr. Nicoson: Of course, it may be that if the witnesses were produced, it might be necessary to cross-examine them. [114]

Mr. Stevenson: That is right.

Mr. Nicoson: If you don't produce the witnesses, we would merely make this stipulation and we would foreclose cross-examination. That is something I think we would have to consider.

Mr. Stevenson: I do not intend to do that, to foreclose your cross-examination.

Mr. Nicoson: In other words, if we should stipulate as you suggested, as far as you and your witnesses are concerned, they probably would not be here unless somebody else called them, and as a matter of fact it seems obvious from your standpoint that there would be no necessity of calling witnesses if the stipulation is that they would testify thus and so, so I do not feel that at the moment I am in a position to preclude myself from the possibility of cross-examining the witnesses. However, I am willing to meet with you and the other counsel to explore the possibilities of reaching some stipulation.

Mr. Schullman: May I make the suggestion that may solve it. I think we could stipulate that if our witnesses were called they would testify what we have related, both as to Mr. Stevenson's union and the Painters, and all other counsel for the unions, and counsel for the government may cross-examine any witness or witnesses that he will please, and we will be glad to bring them in the next one or two or three days, [115] whatever is necessary. That I think would be a type of stipulation which would remedy the entire controversy, in other words, if counsel for the Board wanted the opportunity to cross-examine, as far as the Painters are concerned,

we can call the witnesses that we would utilize, we would give the names to him and tell him that is what we have already said they would testify, and we will bring them in. We don't want to foreclose him of the right of cross-examination.

Mr. Nicoson: As I see, the possibilities of stipulation are not impossible, and since it is drawing close to the noon hour, I suggest that we utilize the next 25 minutes in seeing what we can do. Before we recess, has Board's Exhibit No. 1 been received?

Trial Examiner Kent: I don't know. The record will show. It may be admitted.

(Thereupon, the documents heretofore marked as Board's Exhibits 1-A through 1-T, for identification, were received in evidence.)

Mr. Reed: Mr. Examiner, before we proceed, and while we are on the record, the International Association of Machinists has a correction to offer to the exhibit.

Mr. Nicoson: I was about to make that amendment.

Mr. Reed: The second amendment to the complaint, to show that the proper indication of the Machinists as a party [116] or as an interested party should read, in the box, the case number, as District Lodge 94 instead of District Lodge 96.

Mr. Nicoson: That was one of the amendments that I had in mind, your Honor, and I hereby move to amend the second amended complaint by interlineation to substitute No. 94 for No. 96, wherever the name of the International Machinists is mentioned throughout the complaint.

Trial Examiner Kent: I think that would take care of your motion, Mr. Reed.

Mr. Nicoson: I would like also to move with reference to the Moulders that the local number be changed from 376 to 374, wherever it appears in the complaint.

Now, I notice—maybe though you had better rule on this first.

Trial Examiner Kent: The complaint and all other documents in the file as part of the pleadings may be amended in accordance with Mr. Nicoson's motion.

Mr. Nicoson: Now, I notice in the answer filed by the Carpenters that it is the answer of the Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, named in the complaint as United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor. I take it that is an indication of the correct name of the Carpenters [117] in this proceeding, and if I am so correct, I will move that the complaint be amended so as to show the correct name wherever the other name is indicated in the complaint. Am I right in that, Mr. Garrett?

Mr. Garrett: That is correct.

Trial Examiner Kent: The record may so show.

Mr. Collins: Mr. Trial Examiner and Mr. Nicoson, I made the suggestion a moment ago on behalf of my client, the Pioneer Electric Company, that it would be willing to stipulate to a Board con-

ducted election, and there was some statement from counsel here that would be acceptable and might stop the proceedings. I did not intend by that that the unfair labor charges against O'Keefe & Merritt Company would necessarily be stopped by that proceeding. I merely intended that the Pioneer Electric Company would be prepared to have that matter decided by an election. I would like to have either acceptance of that suggestion or denial of it.

Mr. Nicoson: I have no hesitancy in stating my position on that. It seems to me that that is an impossible stipulation for me to enter into, because the complaint clearly indicates and our proof will show Pioneer Electric Company and O'Keefe & Merritt are responsible to the certification of the Board as the result of the election that was held in their plant on November 20, 1945, and I can't enter into any stipulation which would take away any of the full force and effect [118] of any order that I expect to get as the result of this proceeding in this matter. So as far as the Board is concerned, I can't agree to what Mr. Collins has suggested.

Mr. Collins: In other words, you take the position, to see if I have the position clear, the Board at this time will not order an election or consent to an order of election for the employees of the Pioneer Electric Company. Is that the position?

Mr. Nicoson: I can't say what the Board will do. I can only say as Board's attorney what I will not agree to. The Board may not always agree with me, but as attorney for the Board in these proceedings and in answer to the suggestion you have made

here, I cannot consent or agree to the suggestion that you have made.

Now, if your Honor please, if there is nothing further to come up, before we adjourn, will you mark that as Board's Exhibit 2?

(Thereupon, the document referred to was marked as Board's Exhibit No. 2, for identification.)

Mr. Nicoson: If your Honor and the parties will recall, at the last session we had here last week there was some question concerning the intervention of the International Brotherhood of Electrical Workers. I have had marked as Board's Exhibit No. 2 a letter which was received this week, which in substance states over the signature of [119] Mr. DeMontreville, counsel for the International Brotherhood of Electrical Workers, that they no further wish to press their motion for intervention. I would like to have that marked as Board's Exhibit No. 2 and show it to the parties and offer it for the file.

Mr. Schullman: May I see that, please?

Mr. Collins: I have a copy of it.

Mr. Nicoson: I offer it in evidence.

Mr. Collins: No objection.

Mr. Schullman: No objection.

Trial Examiner Kent: It may be received.

(Thereupon, the document heretofore marked as Board's Exhibit No. 2, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 2

[Letterhead Industrial Relations Associates]

March 7, 1946.

National Labor Relations Board
111 West Seventh Street
Los Angeles 14, California

Attention: Mr. Henry J. Kent, Trial Examiner

Gentlemen:

In the Matter of

Pioneer Electric Company

O'Keefe & Merritt Company

The International Brotherhood of Electrical Workers, through Economic Counsel C. DeMontreville, Legal Counsel James Wolf, and Business Representative Brice Worley, entered an appearance at the March 6, 1945 hearing in the above referenced case in which the United Steel Workers, CIO, have instituted unfair labor practice charges and are seeking invalidation of a certain contract entered into by AFL Local Unions.

The International Brotherhood of Electrical Workers on the record sought permission of the Trial Examiner to intervene if such action seemed desirable to the IBEW, and one week's time to file such Intervention Motion was accorded.

The International Brotherhood of Electrical Workers, notwithstanding that it has one hundred percent membership among the Electrical Maintenance-Construction employees, is not a party to any master or separate contract with either O'Keefe & Merritt or Pioneer Electric Company, is not cited

as a party at interest nor as co-defendant, and hence has no direct interest on the present state of the record.

We therefore are withdrawing our request to file motion for intervention and will not be represented further by our own economic or legal counsel or by any other counsel for other unions in this case.

We thank you for the considerations extended.

Very truly yours,

/s/ C. DeMONTREVILLE,
Economic Counsel for International Brotherhood of
Electrical Workers Local Union B-11 (AFL).

cc: Messrs. Chas. Dwyer
Brice Worley

[Endorsed]: Received March 11, 1946.

Mr. Nicoson: Now, I do not think your Honor has indicated your reaction to my suggestion that we recess for the purpose of exploring the possibility of a stipulation. If you agree with me, I suggest at this time that we recess until 1:30. I would also like for you to request Mr. Collins to have Mr. Daniel P. O'Keefe here at the beginning of the afternoon session. I understood Mr. Collins last time stated that he could have him here on 30 minutes' notice. I am giving him an hour and a half.

Trial Examiner Kent: Yes.

Mr. Collins: Mr. Trial Examiner, I am going to have [120] to do a little crying here, because

Mr. O'Keefe has been available all morning, and he had some other appointment that he broke last Wednesday to be here, and put it over to this afternoon, assuming that he would be done this morning. He has already gone to this appointment. However, I can have him here tomorrow morning. I think some of the things you wanted to prove by him we can stipulate to. There has been an admission here that O'Keefe & Merritt and the Pioneer Electric are engaged in interstate commerce, and those various matters you have asked for, I will have him here. We can have him here tomorrow morning at the opening of the session. He had an appointment last Wednesday or Tuesday afternoon and he put it off.

Mr. Nicoson: Will Mr. Durant be here this afternoon?

Mr. Collins: We will have Durant here. Neither Mr. Durant nor Mr. O'Keefe was subpoenaed, but I will have Mr. Durant down here at any time.

Mr. Nicoson: All right let us have Mr. Durant then this afternoon.

Trial Examiner Kent: Very well.

Mr. Garrett: Prior to the adjournment I would like to file the additional appearance of John Leo Harris, an attorney, as counsel for the Carpenters and Moulders and Stove Mounters. Mr. Harris is sitting on my right.

Trial Examiner Kent: What was that? [121]

Mr. Garrett: Prior to the adjournment I said, if your Honor please, I want to move at this time for the association of John Leo Harris, an attorney

sitting on my right, with myself as counsel for the Carpenters, Moulders and Stove Mounters.

Trial Examiner Kent: Very well. The record may so show. At this time then we will take a recess until 1:30.

(Whereupon, at 11:45 o'clock a.m., a recess was taken until 1:30 o'clock p.m.) [122]

After Recess

(The hearing was reconvened at 1:55 o'clock p.m.)

Trial Examiner Kent: You may proceed.

Mr. Nicoson: Mr. Stevenson informed me a moment ago out in the hall he would not be with us this afternoon.

Please mark this for identification.

(Whereupon, the document referred to was marked as Board's Exhibit No. 3, for identification.)

Mr. Nicoson: If your Honor please, I have had marked for identification the original of the Petition for Certification of Representatives in Case No. 21-R-3101, in the matter of O'Keefe and Merritt Company and United Steelworkers of America, in behalf of Stove Division, Local 1981.

I have the original here, which I will show the parties. If admitted, I would like to have the opportunity of substituting copies for this document. I now offer it in evidence.

Trial Examiner Kent: It will be admitted, and prepared copies received in lieu of the original. The original may be withdrawn.

Mr. Collins: You mean "including" or "excluding." It seems to me there is some typographical error.

Mr. Nicoson: Yes. May I point out, as has been pointed out to me, that in the substituted copy in Paragraph 5, the description of the unit, there is to word "including." It [123] should be "excluding." I ask permission to amend it, accordingly, by interlineation.

Trial Examiner Kent: Yes, I think it might be physically corrected.

Mr. Nicoson: Please mark this document for identification.

(Thereupon, the document referred to was marked as Board's Exhibit No. 4, for identification.)

Mr. Nicoson: I have had marked as Board's Exhibit 4, for identification, the original of an Agreement for Consent Election in Case No. 21-R-31101, in the matter of O'Keefe and Merritt Company. I offer it for the record. In the event it is admitted, I ask permission to withdraw the original and substitute therfore a copy. I show this original to the parties.

Mr. Schullman: What exhibit is that?

Mr. Nicoson: That will be Board's Exhibit 4.

Trial Examiner Kent: There being no objection, it may be admitted, and prepared copies substituted in lieu of the original.

Mr. Schullman: If the court please, in reference to Board's Exhibits 3 and 4, we have no objection to the use of the copies. But we do object to their

introduction in evidence, insofar as they apply to Local 792, the Painters, for the reason that clearly, on the face of those documents, first, [124] in Exhibit 3, the Petition for Certification, the Painters were excluded. They did not participate therein. And that the same situation prevails insofar as Board's Exhibit 4 is concerned.

More importantly, under oath of the representative of the Steelworkers in Exhibit 3, there appears a statement, which, on its face, couldn't be correct, to wit, "The following individuals or labor organizations claim to represent employees in the unit," and the language "none." As a matter of fact, it was known to all the parties that Local 792 had representation insofar as the Painters are concerned. If such statement be considered true, then it is proof positive on its face that the Painters therefore were excluded. We except merely, and object to the application of these exhibits as against Local 792.

Mr. Nicoson: If your Honor please, of course, I can't agree with counsel that either of these documents is susceptible to the interpretation he puts upon them, especially the statement that the Painters are expressly excluded in either one of the documents.

Mr. Schullman: Except, your Honor, we cannot be bound by, or attempt to be bound by an instrument to which we were not ever a party, and concerning which there never has been any notice thereof.

I make a motion for that reason that it not be admitted [125] as against us. I will be glad at the conclusion to file a brief thereon, and if the Examiner wishes to reserve ruling thereon, at the conclusion of the case, I think, the law will substantiate our position.

Mr. Garrett: Board's Exhibit 3 is objected to by my clients, the Stove Mounters, Carpenters and Moulders on the grounds it is incompetent, irrelevant, and immaterial, and shows on its face it is not binding upon these objecting parties.

Stove Mounters, Moulders and Carpenters also object to Board's Exhibit 4 on the ground it is incompetent, irrelevant, and immaterial, and shows on its face that it is not binding upon any of these objecting parties.

I would further call your attention to the fact that none of these parties, the Carpenters, Moulders, or the Stove Mounters are mentioned in either Board's Exhibit No. 3 or Board's No. 4.

Mr. Collins: I wish to object to the introduction of these exhibits on behalf of respondents, Pioneer Electric Company, and the named partners thereof, upon the ground that it is incompetent, irrelevant, and immaterial. It shows upon the face of it it is not binding upon the Pioneer Electric Company or any of its co-partners. It does not tend to prove or disprove any of the issues in this case. [126]

In that connection I wish to offer a stipulation. I will offer to stipulate that so far as the O'Keefe & Merritt Company is concerned, they will sign a

contract with the C.I.O. upon the same terms as the Pioneer Electric Company has signed with the A.F.L., with the following exceptions:

We will offer to sign a contract granting them maintenance of membership, with the customary escape clause. I make that exception because, to the best of my information and knowledge, all of the employees of the O'Keefe & Merritt Company, with the exception of two or three, are members of the A.F.L. It wouldn't be fair to force them into a union not of their own choice.

I also introduce another exception. The organizers for the C.I.O. have constantly claimed they will take O'Keefe & Merritt off the A.F.L.'s unfair list. I will make that a further condition. In other words, we will, on behalf of the O'Keefe & Merritt, offer to sign a contract with the Steelworkers granting them the same terms and conditions as the Pioneer Electric Company has given to the various A.F.L. locals, with the exception that they must get us off the unfair list, which they have claimed they could do, and granting them maintenance of membership, with the customary escape clause.

Mr. Nicoson: I can't enter into any stipulation of that kind. [127]

Mr. Collins: It will shorten the hearing so far as O'Keefe & Merritt is concerned if the C.I.O. wants to sign up with us. They say we won't bargain with them. We are willing to bargain with them. Now is their chance in open court to do that. I talked to Jerry Conway last week, and told him

we would bargain with him if he wanted to come and bargain.

The position of this employer is now very clear to this Board, I think. We are willing to have a consent election so far as Pioneer is concerned. We are willing to sign a contract so far as O'Keefe & Merritt is concerned. What is the use of all these hearings? We are just wasting everybody's time.

Trial Examiner Kent: Are you going to offer other exhibits of proof, showing that the Los Angeles Metal Trades Council, A.F.L., were agents or representatives of any of the unions named in these?

Mr. Nicoson: Oh, yes, we intend to put that in.

Trial Examiner Kent: Well, I already ruled on this. I assumed the exhibits had been shown to the parties and they were not objecting. I reserve my ruling at this time and reserve ruling on the admission of these particular exhibits at this time. They may be subsequently offered.

Mr. Garrett: May my clients have the further objection entered, also, for lack of proper foundation. That is, as to [128] the Stove Mounters, the Carpenters and the Moulders.

Mr. Collins: Mr. Trial Examiner, it seems to me that we are going to be wound up in something that is going to take us weeks to try, if we don't get at the real issue.

It seems to me that the entire issue is whether this O'Keefe & Merritt and Pioneer Electric are one and the same concern. If you recall, I have

offered to stipulate, I made an offer on behalf of my client Pioneer Electric that we will consent to an election. As far as O'Keefe & Merritt is concerned, we will sign a contract. That is more than bargaining.

If the Board has any objection at all to these various offers of mine, it must be on the theory O'Keefe & Merritt are one and the same concern with Pioneer. We could very readily try that issue in half a day, and get it over with.

Mr. Schullman: If the court please, I am inclined to agree. It isn't a mere acquiescence, because I fall on this side of the table, but apparently the relief sought here is being granted now by an offer made by respondents.

I agree that the Board having charged that the corporation and partnership are identical interests or persons or entities, it couldn't very well accept a stipulation and abandon its charge.

I think, therefore, from the standpoint of chronology of proof—we have no right to suggest the chronology—I think once you resolve that issue you have then remedied every charge that exists in the entire pleadings, for the sake of expedition. You have answered the purpose of this action. [130]

Therefore, I concur in the suggestion made by counsel for respondents in that we can proceed on the proof, whichever may be adduced, concerning the facts of whether or not O'Keefe and Merritt are the same as Pioneer Electric, realizing that the

proof and order are entirely within the discretion of the Trial Examiner.

Trial Examiner Kent: Well, of course, I have to assume the allegations of the complaint are made in good faith. I don't think it is necessary for me to limit the Board's presentation at this time.

Mr. Schullman: We don't intend—

Trial Examiner Kent: I have reserved my ruling on these particular documents.

Mr. Schullman: We don't mean that. What we mean is this: This is not an attempt to limit the presentation of the factual proof. If you go into any forum to seek a certain type of judgment and that judgment is being offered by the party against whom the action has been brought, then the issue, insofar as that end of it is concerned, is moved and resolved. The only reason why the Board, as I see it, cannot accept a justly stipulated offer is because there is a charge now pending, in which charge the alleged O'Keefe and Merritt and the Pioneer Electric are one and the same entity.

Therefore, the resolution of that charge would remove any obstacle to the acceptance of the stipulation. We don't [131] seek to foreclose anybody on the offer of proof or whatever proof will come in, or say, you adduce testimony that will give the Trial Examiner a chance to determine; that will unquestionably shorten the hearing.

Trial Examiner Kent: Yes, except you are putting the Trial Examiner in this position: The Trial Examiner, in his intermediate report, of course,

makes recommendations to the Board. The Board's order is really the decision in the case.

Mr. Schullman: That is right.

Trial Examiner Kent: Now, assuming I ruled the two entities were not identical, and thereby preclude Board's counsel from putting in a complete case, then I might wind up with part of a record and cause the hearing to be reopened. I think we had better take a complete record.

Mr. Collins: Before you rule on this, let me point this out to you: We are here before this hearing today to determine whether or not the contract between A.F.L. and the Pioneer should be torn up. If Pioneer is a separate legal entity, clearly you have no jurisdiction to so order. If they are one and the same, if they are the same as the O'Keefe and Merritt Company, that would be the logical thing. If O'Keefe and Merritt and Pioneer are one and the same, therefore, O'Keefe and Merritt would be guilty of unfair labor practice if they didn't bargain in good faith with the C.I.O.

Is Pioneer and O'Keefe and Merritt the same, or are they separate, [132] legal entities. If they are separate, legal entities, on behalf of O'Keefe and Merritt I have stated right now I will not only bargain with them, I am laying down the terms of the contract I will sign, which among other things amounts to 20 per cent more pay than any other stove industry in this area is receiving. It is a contract, I am inclined to believe, the C.I.O. will accept. The only thing they will object to is the maintenance of membership. Certainly we are down to

bargaining, and that is the only thing they have objected to. If the Pioneer is a separate, legal entity—if it is—I am giving them more than they are entitled to. I am giving them the right to come in and tear up a good contract, signed by somebody that never claimed membership therein. I am giving them a chance to come in and have an election. That is more than they are entitled to.

Mr. Tyre: May I point out to your Honor that there are two other problems involved that Mr. Collins failed to mention to the court. One is the question of not only bargaining collectively but bargaining in good faith, and a number of items that go to make up what is good faith, including the material that the Board is going to introduce into the evidence. The second matter which Mr. Collins omitted to state to the court is that there is also an 8 (1) charge in this case, which again would have relevance to the question of 8 (5), in any event it is evidence different in some [133] instances, at least, from evidence that we will put in to prove the 8 (5).

Mr. Collins: I am not attempting to stop the complaint as against the O'Keefe and Merritt Company and various employees and so on of unfair labor charges. That is an entirely separate transaction. If the Board cares to proceed with that, that is another thing. I am merely trying to shorten all this business up here if I can. I can visualize people coming in here for days talking about whether we will bargain or not. I can also visualize proof going on for days as to whether or not

the other charge is substantiated or not, and I believe now we are arguing about things which will become absolutely moot if we decide whether or not the Pioneer Electric Company is a separate, legal entity having a right to make separate contracts.

Trial Examiner Kent: I think in order to get a complete record I have got to take all the relevant testimony. Assuming I narrowed the presentation down to whether or not the Pioneer, the partnership, and the corporation, are tied up together so that the hearing may be shortened and ruled that neither of the employer respondents may be an alter ego of the other. It might require a double hearing for the Board might reopen the hearing and order additional evidence taken on other phases of the case it deemed material. [corrected in pencil.]

Mr. Collins: That wouldn't be a waste of time, on the other hand you might save several weeks time, because the Board might decide it the other way. You are not going to [134] lose anything.

Trial Examiner Kent: No, I think I will let Mr. Nicoson proceed with his proof.

Mr. Nicoson: Thank you, your Honor.

Mr. Collins: I have an objection. I don't believe your Honor has ruled on the objection. I have made an objection to this.

Trial Examiner Kent: Yes. Well, of course, you have the benefit of the automatic exception to an adverse ruling.

Mr. Nicoson: Your Honor is reserving ruling on 3 and 4?

Trial Examiner Kent: On Exhibits 3 and 4, that is right.

Mr. Collins: Which one was 3, Mr. Nicoson?

Trial Examiner Kent: 3 was the petition.

Mr. Nicoson: Mark this Board's Exhibit 5.

(The document referred to was marked as Board's Exhibit No. 5, for identification.)

Mr. Nicoson: I have had marked for identification as Board's Exhibit No. 5 the original of the tally of ballot in the case No. 21-R-3101, dated November 20, 1945. I offer it for the record and ask permission, if it is accepted into evidence, to withdraw the original and substitute therefor copies.

Mr. Schullman: In behalf of Local 792, there is no objection so far as the substitution is concerned, but again we object to the introduction of Board's Exhibit 5 as not [135] being applicable as against Local 792, because on its face it shows votes cast for the Los Angeles Metal Trades Council, of which the Painters Local 792 is not and never has been a part thereof, and repeating the same objections we previously had to Exhibits 3 and 4, we object to Exhibit 5.

Mr. Collins: On behalf of the respondents, Pioneer Electric Company, I make the same objections I made to Exhibits 3 and 4 as to Exhibit 5.

Mr. Garrett: The Carpenters and Moulders and Stove Mounters make the same objection to Board's Exhibit No. 5 as they did to Board's Exhibits 3 and 4.

Trial Examiner Kent: May I see a copy of it,

please? I will reserve ruling on Board's Exhibit No. 5 at this time. It may be reoffered later.

Mr. Nicoson: Mark this Board's Exhibit No. 6.

(The document referred to was marked as Board's Exhibit No. 6, for identification.)

Mr. Nicoson: I have had marked for identification as Board's Exhibit No. 6 consent determination of representatives signed by Stewart Meacham, Regional Director, National Labor Relations Board, in Case No. 21-R-3101, in the Matter of O'Keefe and Merritt, and I offer it for the record, and ask permission, if it is received into evidence, that I withdraw the original and substitute therefor a copy.

Mr. Schullman: In behalf of Local 792 of the Painters, [136] we object to the introduction in evidence of Board's Exhibit No. 6 as applying to my clients, for the reasons heretofore stated, and in addition, which additional reason shall apply to all three exhibits, to wit, 3, 4 and 5, that Board's Exhibit No. 6 and the previous exhibits clearly show that this is a consent election and a consent determination; that therefore you cannot conclude by such consent a party who is not a party thereto, and that the attempt to so conclude a party who has no knowledge of and who has not participated by consent of other people, to wit, another organization to which my clients do not belong, you are thereby depriving them not only of the rights in the Wagner Labor Act, but even a more paramount right, in the Constitutional right of due process, and therefore we respectfully request that Board's Exhibit

No. 6 and the previous Exhibits, 3, 4 and 5, shall not apply or be given or dealt with any force or effect against my clients, Painters Local 792, and the fact that this Trial Examiner, if you please, nor the Board on a Constitutional question, if you please, irrespective of any attempt to so conclude parties, can conclude parties who have not been party to the consent.

Mr. Garret: Preclude.

Mr. Schullman: Conclude is correct, determine, end.

Mr. Collins: Are you through, Mr. Schullman?

Mr. Schullman: Yes. [137]

Mr. Collins: On behalf of the Pioneer Electric Company and the members of the co-partnership Pioneer Electric Company, I object to Board's Exhibit 6 on the ground it is incompetent, irrelevant and immaterial, does not tend to prove or disprove anything at issue in this case, so far as those respondents are concerned, and upon the further ground that there is no proper foundation laid.

Mr. Garrett: The Carpenters, Stove Mounters and Moulders make the same objections to Board's Exhibit No. 6 as those previously made to Board's Exhibits 3, 4 and 5.

Trial Examiner Kent: Let me see the exhibit, please. I make the same ruling. I will reserve ruling, pending the renewal of the offer.

Mr. Nicoson: The Board calls Charles Spallino.

CHARLES SPALLINO

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nicoson:

Q. Will you state your name for the record?

A. My name is Charles Spallino.

Q. What is your address, Mr. Spallino?

A. 1200 North Britannia Street.

Q. Is that in the city of Los Angeles? [138]

A. In Los Angeles.

Mr. Garrett: I didn't understand that address.

The Witness: 1200 North Britannia Street.

Q. (By Mr. Nicoson): What is your business or occupation?

A. Well, I am working at O'Keefe and Merritt.

Q. In what capacity?

A. Well, the last job I was a motor repair man.

That was up until yesterday.

Q. How long have you been employed by O'Keefe and Merritt?

A. Going on 19 years.

Q. In what capacities have you been employed?

A. Oh, I have had at times every department in there, I have worked in. Pretty well refrigeration is the biggest part of my time, I have spent most of my time in refrigeration, and I have worked as a carpenter helper, as maintenance, and almost everything you can think of. I have even done some building there as a riveter.

(Testimony of Charles Spallino.)

Q. Have you ever had any membership or association with the United Steelworkers of America?

A. Not up until about two years ago.

Q. What was your association or membership in the United Steelworkers of America about two years ago?

A. Well, I was just a signed up member.

Q. Did you otherwise participate?

A. I did participate to one meeting. [139]

Q. Do you know Joseph Spallino?

A. Yes, sir, he is my brother.

Q. At that time that you were speaking of in your testimony of membership in the United Steelworkers, what position did Mr. Spallino hold, if you know?

A. I am not so sure whether he was assistant superintendent, but I think that is what he was at that time.

Trial Examiner Kent: This is your brother?

The Witness: Oh, I take that back. He was working for Pioneer Electric.

Q. (By Mr. Nicoson): And in what capacity, if you know, was he working for the Pioneer Electric?

A. He was a superintendent in the Pioneer Electric.

Mr. Schullman: Pardon me. Was the time fixed on that, Mr. Nicoson?

Mr. Nicoson: Two years ago he said.

The Witness: That was during the war.

Q. (By Mr. Nicoson): During this period, did

(Testimony of Charles Spallino.)

you have any conversation with Joseph Spallino concerning the United Steelworkers?

A. Yes, I did. I was—

Q. What was that and where did that conversation take place?

A. Well, I was called by him and taken to Bill O'Keefe's office.

Q. That is William J. O'Keefe? [140]

A. William J. O'Keefe.

Q. Who is William J. O'Keefe?

A. He is the son of Mr.—I don't know his initials. Mr. O'Keefe, that is Senior.

Q. Do you know what capacity Mr. W. J. O'Keefe had at that time?

A. Well, he was the superintendent of the plant. This was up in Collins' office. Collins was present, if I can state that.

Q. What Collins do you mean?

A. Cecil Collins, the attorney.

Q. Cecil Collins, the attorney here?

A. That is the attorney.

Mr. Collins: May we have the date of this, Mr. Nicoson?

Mr. Nicoson: Yes, I am going to inquire. Who else was present?

A. Well, it was just us four.

Q. I think I asked you and I am not too sure that you answered at the time, in what capacity did Mr. W. J. O'Keefe serve?

A. Well, he sat there silent.

Q. No, no, in what official capacity, I believe

(Testimony of Charles Spallino.)

you testified that he was superintendent of the plant.

A. He was the superintendent of the plant.

Q. What plant? [141]

A. O'Keefe and Merritt plant.

Q. Can you fix for us the time when this conversation took place?

A. Well, the meeting was on a Sunday, I don't recall the date or the month, it was on a Sunday, the meeting was held.

Q. Can you fix it as to the part of the year?

Mr. Collins: May I interrupt just a moment? Mr. Durant is on the phone out there. Do you want him down here now?

Mr. Nicoson: Yes.

The Witness: It was Sunday in 1942. I can't recall the month.

Q. (By Mr. Nicoson): Can you fix it as to whether or not it was in the spring, fall, winter or summer?

Mr. Schullman: Pardon me, counsel. Did he say Sunday in 1942?

Mr. Nicoson: That is right.

Mr. Schullman: Then it was longer than two years ago, isn't that correct?

The Witness: Well, it was two years ago. It was during the war.

Mr. Schullman: This is 1946. That is why I am trying to correct that.

The Witness: It was in about that time.

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): Now, can you answer my question as to whether or not it was in the spring, fall, winter or summer? [142]

A. Well, it was pretty warm that day. It could have been in the spring. It was on a Sunday that we had this meeting.

Q. Now, counsel has pointed out that you said 1942 and he has also pointed out to you that 1942 would be more than two years ago. Can you state whether it was two years ago or 1942?

A. Well, I would say it was about two years ago.

Q. About two years ago. What was said in the conversation that you had in Mr. Collins' office? By the way, where was Mr. Collins' office at that time?

A. It was upstairs in the personnel department.

Q. In what building?

A. That is the office in the front of the plant.

Q. What plant?

A. At O'Keefe and Merritt.

Q. Now, will you tell us what was said at that time and who made the statement?

A. Well, it started out with—

Mr. Garrett: Wait a minute, now. There is going to be some objections to this. May I have the witness on voir dire for a few questions relating to foundation? I think it is quite clear that the foundation is insufficient at the present time. We have a witness that in the first place is rather difficult or is going to be rather difficult for me to cross-examine this witness, anyway, because there is no [143] evidence that anyone connected with any of my cli-

(Testimony of Charles Spallino.)

ents was present at the conversation, and I am going to object later, of course, on that ground. And I call your Honor's attention to the fact that we have here a rather unique spectacle of a witness who can't remember whether a certain conversation about which he is willing to attempt to tell us the details, we have here a witness——

Mr. Nicoson: Your Honor, I object to the expostulation of counsel. If he wants to examine this witness on voir dire, I am perfectly willing to have him do that. If he wants to make a speech, I object.

Mr. Garrett: I am telling you why I want to examine him on voir dire, your Honor. I know that I was too long in stating my reasons, but it just seems to me to be a little bit unwise to let the witness go as to foundation while he is still in such a state of mind that he can't remember whether the conversation took place in 1942 as he first stated, or two years ago, which would be 1944, as he later stated.

Mr. Collins: I object to the evidence upon the ground there is no proper foundation laid. I don't know whether the conversation was in 1942 or 1944. I would be impossible to cross-examine him.

The Witness: Does the witness have a chance to explain something, your Honor, I ask? [144]

Trial Examiner Kent: What do you have to say?

The Witness: Well, I have been under pressure since I left here last Wednesday, due to the fact I

(Testimony of Charles Spallino.)

might remember things that has happened in the plant and things that has happened to me.

Mr. Garrett: If the witness is not in a state of mind to testify with some clarity——

The Witness: I am in a state of mind.

Trial Examiner Kent: You may inquire. I think you can go into your matters on cross-examination. I think the objection primarily goes to the weight of the testimony.

Mr. Garrett: There is no foundation as yet.

Mr. Collins: There is an objection before the court as to lack of foundation.

Mr. Garrett: Here is a witness who throws some doubt upon the record as to his mental capacity at the present time, who can't remember the difference between 1942 and 1944.

Mr. Nicoson: Can you testify to all the conversations you had in 1942, 1944 and 1945 or last week?

Mr. Garrett: If I came to court you can bet your life I would be in position to.

Mr. Nicoson: The witness has testified to his best knowledge it was two years ago. If you want to examine him on that, I have no objection.

Mr. Garrett: May we have him on voir dire, your Honor?

Trial Examiner Kent: Very well. You may proceed.

Q. (By Mr. Garrett): When did you first go to work for the Pioneer Electric Company?

A. I never worked for the Pioneer Electric.

(Testimony of Charles Spallino.)

Q. Your testimony is now that you never worked for the Pioneer Electric.

A. That is right.

Q. Do you recall your testimony of about five minutes ago on the stand when you were being examined by Mr. Nicoson? A. Yes.

Q. With respect to who you worked for?

Mr. Nicoson: Just a minute. I am going to object to [146] that question. The purpose of this examination is voir dire to establish a foundation, namely, as to the time and place and who was present at the conversation which he is about to testify to. The rest of this is cross-examination, and improper.

Trial Examiner Kent: I think there is merit in counsel's argument. I will sustain the objection.

Mr. Garrett: All right.

Q. (By Mr. Garrett): Now, who was Joseph Spallino working for at the time of this conversation, if you know?

A. He was working for Pioneer Electric.

Q. How long had he been working for Pioneer Electric, if you know?

A. Well, with the date, the date the war broke out, in 1942 or 1943, whatever it was. I can't remember the exact date.

Q. He went to work for the Pioneer Electric about the time the war started, is that correct?

A. Yes.

(Testimony of Charles Spallino.)

Q. By that you mean the participation of this country in the war, is that correct?

A. That is correct.

Q. And you have a distinct recollection when that was, don't you?

A. I don't have the date or the month when that happened.

Q. You remember Pearl Harbor, don't you?

A. Yes, that was June the 7th, or whatever it was.

Q. When was it?

A. June the 7th, or whatever it was, I don't remember.

Q. How long have you resided in this country, Mr. Spallino? A. In this country?

Mr. Nicoson: Objected to as immaterial and improper voir dire examination. On cross-examination it would be proper.

Trial Examiner Kent: I will sustain the objection.

Q. (By Mr. Garrett): This conversation then took place shortly after Joseph went to work for Pioneer Electric, did it? A. Well, yes.

Q. I see.

A. I don't know how soon it was, but he was working for Pioneer Electric.

Q. I see. Did you make any notes or memoranda about this conversation you had?

A. I am going to tell you one thing, I only went to school in the fifth grade, so I am not educated, so I didn't make notes.

(Testimony of Charles Spallino.)

Mr. Nicoson: You just answer the question.

Q. (By Mr. Garrett): You didn't make any memoranda of the conversation, is that right?

A. That is right.

Q. Can you write? [148]

A. Yes, I can write.

Q. But you did not make any memoranda, although you were able to write about it?

Mr. Nicoson: Objected to as having been asked and answered, and improper voir dire examination.

Trial Examiner Kent: Objection sustained.

Mr. Garrett: All right.

Q. (By Mr. Garrett): Now, when you went to that meeting that you have testified took place, when you were called there by your brother who had just recently gone to work for Pioneer Electric—

Mr. Nicoson: Objected to as assuming a fact not in evidence and not the witness' testimony.

Q. (By Mr. Garrett): That is on that Sunday you went to this meeting, which was shortly after your brother had gone to work for the Pioneer Electric, wasn't it?

A. Well, he was working for the Pioneer Electric when I—

Q. And he went to work at the time of the start of the war, is that correct, for them?

A. It was during the war, because they had not been established, it took them a long time before they got the place built up there.

Q. Do you recall whether they started building

(Testimony of Charles Spallino.)

it up before they started the war or afterward?

A. It was during the war. [149]

Q. Who were you working for at the time of this conversation?

Mr. Nicoson: Objected to as immaterial.

Trial Examiner Kent: He may answer.

A. I was working in the Libby.

Q. (By Mr. Garrett): I didn't get the answer.

A. I say I was working for the Libby line, which is part of the machine shop.

Q. When you say the Libby line, was that some kind of a production line?

A. Yes, sir, they have turret lathes there and milling machines and I don't know the names of all those machines.

Trial Examiner Kent: That was part of O'Keefe & Merritt?

The Witness: Yes.

Q. (By Mr. Garrett): Do you recall what you were making at that time?

A. What I was making?

Mr. Nicoson: Objected to as immaterial, not proper voir dire examination. He says he wants to ask these questions for the purpose of laying the foundation for a conversation that took place and the substance of the conversation. I submit that this is just about as remote from voir dire examination as the human mind can conceive.

Trial Examiner Kent: I will sustain the objection.

Mr. Garrett: All right. [150]

(Testimony of Charles Spallino.)

Q. (By Mr. Garrett): Do you recollect whether this conversation took place during working hours or not? A. During working hours, yes.

Q. What shift were you working at that time?

A. Day shift.

Q. Day shift? A. That is right.

Q. And you were working for the O'Keefe & Merritt Company at that time, were you?

A. That is right.

Q. How many days a week was the O'Keefe & Merritt Company working?

Mr. Nicoson: Objected to as immaterial.

Mr. Garrett: Just a moment. Pardon me, Mr. Nicoson.

Mr. Nicoson: I am sorry. I thought you had finished.

Mr. Garrett: Pardon me, sir.

Mr. Nicoson: Was there more to that question?

Mr. Garrett: No, that is all. How many days a week was O'Keefe & Merritt Company working at that time?

Mr. Nicoson: Objected to as immaterial, not proper voir dire examination.

Trial Examiner Kent: He may answer, if you know, how many days a week were they working?

A. How many days a week? We were working around 60 hours a week, I think, around that time.

Q. (By Mr. Garrett): Well, how many days?

A. Well, six days.

Mr. Garrett: No further questions.

(Testimony of Charles Spallino.)

Mr. Collins: May I have the witness on voir dire?

Trial Examiner Kent: Very well.

Q. (By Mr. Collins): Mr. Spallino, you say that this conversation took place in the office of Cecil Collins, the attorney for O'Keefe & Merritt Company, sometime after the war started in 1942 or 1943, whenever it started, is that right?

A. Yes, sir.

Q. Can you estimate about how many months it was after the declaration of war?

A. All I know is when the C.I.O. was organizing there. You will remember that date as well as I do. [152]

Q. No, I must confess I don't. I don't know when they were organizing there. How long after this June 7th or whatever date it was you have already told us in 1942 did this conversation take place? Do you remember that?

A. I don't remember the exact time.

Q. The nearest you can come to it is within two years of the date, is that right? A. Yes.

Q. Is that right? A. Yes.

Mr. Collins: That is all. No further questions.

Mr. Nicoson: There is an objection outstanding now, I think.

Mr. Collins: I now object to the conversation taking place in the office of Mr. Collins and in the presence of Joe Spallino and W. J. O'Keefe, on the ground there is no foundation laid. He can't re-

(Testimony of Charles Spallino.)

member the date within two years, which is a long time.

Mr. Garrett: The Stove Mounters and Moulders and Carpenters object to his being permitted to detail the conversation on the ground, first, that no proper foundation has been laid; on the second ground that the witness' answer showed his recollection to be so imperfect as to cast great doubt as to whether any weight should be given to his testimony, should he be permitted to testify; on the third ground [153] that the conversation, if any, is not binding upon any of these objecting unions; first, on the foundation that has been laid it has not been shown that any member, representative, agent, or person connected in any capacity with any of these objecting unions was present; on the further ground that it has not been shown by the foundation that the conversation concerned anyone with whom these objecting unions are charged in the complaint with having entered into contractual relations.

Mr. Schullman: On behalf of Local 792, we object to any testimony of this witness insofar as it may affect Local 792 for a few reasons which we believe are more legally pertinent, not only more legally pertinent, but maybe more pertinent insofar as Local 792 is concerned. First we object because of the fact that it has been stated there were no persons present, either principal or agent, who could possibly involve Local 792, but more importantly than all, I think if you will look at the com-

(Testimony of Charles Spallino.)

plaint in this case, there is no allegation whatever which would permit testimony of such a hiatus in time, assuming any portion of the witness' testimony would be applying to us, any part of it, that it occurred either in 1944 or 1942, there is no allegation in the complaint that raises anything until at least 1945, October, and the time element of the two years or three years in the event they are talking about this in 1942, or at least a year and a half, assuming that it is in 1944, [154] and possibly visiting matters which are in the complaint as being first commenced in being or esse October 1, 1945. Therefore, it is totally incompetent, irrelevant, and immaterial, does not tend to prove or disprove any issues of the case, and no testimony can be adduced of this matter which has any legal effect.

Mr. Garrett: My union would make the further objection that this is incompetent, irrelevant, and immaterial, if your Honor please.

Trial Examiner Kent: Counsel may proceed.

Mr. Nicoson: Do I understand the objections are overruled?

Trial Examiner Kent: Yes.

Q. (By Mr. Nicoson): Will you now state, Mr. Spallino, at that time what was said and who said it?

A. Before I got up to Collins' office, Joe Spallino at that time was trying to advise me, why did I ever go to that meeting, and I told him that Sunday is my day off and I just saw fit to go anywhere

(Testimony of Charles Spallino.)

I wanted to, and I thought I was free to do that on Sunday. Anyway, I put him on the spot.

Q. Never mind. What was said and who said it?

A. So we went to Collins' office and they asked me why wasn't the company treating me—

Q. Who asked you? A. Cecil Collins.

Q. Asked you why what?

A. Why was it I had to go to a union, wasn't I getting satisfaction, wasn't they treating me all right there, and I told him that I had my reasons why I went to the meeting, because I had not been treated well, and Bill O'Keefe, when I pointed to him, that several occasions there when I tried to get a break, right soon after I had an accident there and came back to work, Bill O'Keefe put me to work at nights, and at that time I was telling this to Bill, I was saying it to him, that I was not treated so well, and I was put on the job at nights in the projectile department, sent there to take charge of it as inspector and sort of leadman. It was something I didn't know anything about. Well, I accepted the job for a while at nights.

Q. Is that all what you were telling Mr. O'Keefe?

A. Yes, and those two weeks that I worked nights, the boys that were working nights there were on a bonus that they were making from \$1.75 to \$2.00 and \$2.50 an hour bonus, so I asked him why was it that I didn't get in on this bonus, that I should be entitled to some of that bonus, but he told me that I was not entitled to this bonus and that I

(Testimony of Charles Spallino.)

didn't like to work at nights. He wanted me to learn the trade there and show him some production and he wanted to make me a foreman in the night department, and he says if you don't want it that way, you can come back to work days, but he wouldn't put [156] me on the bonus, so a lot of sarcastic answers—

Q. Never mind. What was said?

A. I was talking to Bill at the time, I was telling him all the reasons why I thought I needed somebody to take care of my interests, because I couldn't go to them for any advice or for any help to better me in any way. He just seemed to ignore me all the times that I did ask him for a break.

Q. Was there anything further said at that meeting? A. So they told me that—

Q. Who told you?

A. Well, between Joe and Collins here, that things would be taken care of.

Mr. Collins: Just a moment, I object to that. Between Joe and Charlie, who said what?

Trial Examiner Kent: Yes, try to state what you said and what the other gentleman said, and name the people who said it.

The Witness: Well, Joe Spallino—

Trial Examiner Kent: Said what?

The Witness: Says that I shouldn't get mixed up in that because they will try to give me a break somewhere.

Q. (By Mr. Nicoson): Did Mr. Collins have anything to say about that?

(Testimony of Charles Spallino.)

A. Yes, he says, "Yes, you have been with us a long time" and Joe Spallino was to give me a break, or to see that I would get some breaks in here now, and so they wanted information [157] who and what, appeared to me that they wanted information on who was at this meeting.

Mr. Collins: Just a moment. I move that the words after "appeared to me" be stricken, upon the ground that is a conclusion of the witness. He can testify to what was said.

Trial Examiner Kent: It may be stricken. Try to state who said what and say what they said.

Mr. Nicoson: You leave the drawing of conclusions to somebody else. You tell us what was said and who said it, that is all.

The Witness: So I promised them that I would not have anything to do anymore with the union, just go back and work, and they didn't have nothing to worry about, so I went back to work.

Q. (By Mr. Nicoson): Do you know whether or not there were any further efforts made for the employees to associate themselves with the United Steelworkers at that time?

A. No, it was quite a while that we was not bothered any more with the C.I.O.

Q. Was there another attempt

A. Yes, soon after the war.

Q. What do you mean, soon after the war?

A. Well, sometime after V-J Day.

Q. About how long after V-J Day? [158]

(Testimony of Charles Spallino.)

A. Well, I would say within two or three months.

Q. Two or three months? A. Something.

Q. Do you know when V-J Day was, Charles?

A. I don't remember the date.

Q. How long ago from now was it? How far back from now was it?

A. Let's see. It would be about eight months.

Q. About eight months?

A. Somewhere around about eight months.

Q. How far back from now was it as you now recall it that the C.I.O. began efforts again?

A. Well, I don't know. That was around in November or October, somewhere around that time.

Q. Could it have been before then?

A. Probably could have.

Q. Can you describe for us what occurred in and around the plant that you saw about the C.I.O. or its organizers?

A. Well, they had leaflets there every day.

Q. What? A. Leaflets or literature. [159]

Q. What did he do with it?

A. Passed them out at the entrance.

Q. To whom?

A. To the employees, to all employees.

Q. Did he do that on more than one occasion?

A. Yes.

Q. To the best of your recollection how long did this handing out of the leaflets occur, what period of time?

A. I would say about two or three days.

Q. For how long?

(Testimony of Charles Spallino.)

A. Well, in fact, we do get some now, now and then. Of course, we don't get them as often now.

Q. I am talking about at or about that time. You say they were handed out about every two or three days. A. Yes.

Q. How long did that go on?

A. That went on through the whole—before the election, very frequently.

Q. Did the C.I.O. or its organizers use any other devices to communicate with the employees?

A. Yes, they had a PA system.

Q. What is a PA system?

A. It is a—one of these sound trucks.

Q. How often would you see the sound truck around there?

A. Well, they came around at least once a week, that is, [160] prior to the election; on a Friday. Mostly on Fridays, prior to the election.

Q. Someone would speak over the PA system?

A. Yes.

Q. The sound truck? A. Yes.

Q. What was the nature of the speech or talk?

A. The talk was they were giving us a program of what the C.I.O. was doing throughout the country, and what they could do for us.

Q. State whether or not you know of any meeting held by the C.I.O. during that period?

A. Yes, there was one. I heard about it, but I didn't—

Q. You didn't attend?

A. I didn't attend.

(Testimony of Charles Spallino.)

Q. Did I understand you to say a moment ago that the C.I.O. is still passing out leaflets around the plant?

A. Yes, they have, notifying development, things like that. I think it has been a couple of times after that, after that election.

Q. Do you know a Mr. John Levascos?

A. Yes, sir.

Q. Who is Mr. Levascos?

A. Well, he is an expeditor in the O'Keefe & Merritt.

Q. Do you have any idea how long John Levascos has been [161] employed by O'Keefe & Merritt?

A. Well, he served in the Navy for awhile. If you want to include the time, how long he has worked there, since he is out of the Navy or before—

Q. Do you know when he first went there, went to work for O'Keefe & Merritt?

A. He must be there several years, because he happened to be a member of the Five and Over Club.

Q. What do you mean by several years?

A. I would say seven or eight years.

Q. During that time he has spent some time in the Navy; is that correct? A. Yes.

Q. Do you have any idea how long he was in the Navy? A. I would say roughly two years.

Q. When was he in the Navy for two years, over what period of time?

A. Let's see, this is '46. I would say between

(Testimony of Charles Spallino.)

'42 and—1943 and 1945; somewhere around that time.

Q. Do you recall when he returned from the Navy, about when?

A. Well, it was about the middle part, I would say, or the early part of last year.

Q. Do you know anything about the Five and Over Club? A. Yes, I do. [162]

Q. What is the Five and Over Club?

A. Well, it is a sort of a social club that the company—

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial.

Mr. Collins: Objected to on the ground it calls for a conclusion of the witness.

Mr. Nicoson: Read the question.

(The question was read.)

Q. (By Mr. Nicoson): Do you know what the Five and Over Club is? A. Yes.

Q. Have you ever had any connection with the Five and Over Club? A. Well, I held office—

Q. Answer yes or no. A. Yes.

Q. What connection have you had with the Five and Over Club?

A. I held office as vice president for four years and president for three years.

Q. What is the Five and Over Club?

Mr. Collins: Objected to as calling for a conclusion of the witness, a legal conclusion.

Mr. Nicoson: I will withdraw the question.

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): What does the Five and Over Club do, [163] or what did it do?

Mr. Collins: Objected to on the ground it is incompetent and immaterial; not tending to prove or disprove anything in this case.

Mr. Nicoson: That I will stand on.

Trial Examiner Kent: I would be inclined to sustain the objection. I can't see it has any materiality, except as background. Is that the purpose?

Mr. Nicoson: I submit, your Honor, this is all preliminary. And I submit your Honor's unfair ruling at this time, in making the statement you have in the record at the moment, that it doesn't have any materiality except as background, without having heard the evidence of what the Five and Over Club is, which I will show you in a moment, if you will permit me to, is involved in these proceedings. I submit it is an unfair statement of the Trial Examiner.

Trial Examiner Kent: Well, the allegations seem, to my recollection, to start with, I thought, October, 1945.

Mr. Nicoson: That is correct. Of course, you have to have identification of persons, organizations or anything else that has anything to do with the unfair labor practices which I have alleged in my complaint. I am now trying to show you what they are and trying to identify so the record will clearly reveal what they are, and then I will show you how they become involved. You can't possibly show the

(Testimony of Charles Spallino.)

whole [164] purport of this line of examination by any single question. You have to lay preliminary ground to make the descriptions so they will stand out in the record and the record will show what they are.

Mr. Garrett: I will withdraw my objection.

Mr. Schullman: Without making any objection to this single line of inquiry, in support of the Trial Examiner's statement, I think we enunciated very valid rules. I agree that the background may be shown in N.L.R.B. cases where they are a little different than this type of a case, complaint case. But anything that occurred of any kind or description prior to the date of election, October 1, 1945, has no relevancy to this case, because, assuming the worst occurred prior to this time, it all is merged and cured by the parties in an election, without my own client being involved, on November 19, 1945.

So that assuming that Mr. Collins killed somebody and that the C.I.O. committed unfair labor practice and the A.F.L. committed the same, I agree that a normal case, we don't have a consent election which cleans it up. That is why my original objection was to all testimony relating to assumed coercion or anything that occurred prior. You couldn't tie it in that consent election, that it was a stop-gap, so that background is not involved any more.

Trial Examiner Kent: If the allegations of the complaint [165] are sustained, the consent election

(Testimony of Charles Spallino.)

would be no bar to the admission of this testimony.

Mr. Nicoson: Will you read the question, please?

(The record was read.)

The Witness: The Five and Over Club is a social club and it takes care of the members, that is, compensation. We have a death benefit; sort of a social club.

Q. (By Mr. Nicoson): How long has the Five and Over Club been in existence, to your knowledge?

A. I would say since 1935.

Q. What is the prerequisite of membership into that club?

A. How is that? I didn't understand.

Q. Who may be members of the club?

A. Who may be members of the club?

Q. Yes.

A. Anyone working five years or over.

Q. Where? A. At O'Keefe & Merritt.

Q. Was there a Five and Over Club in existence at the time you testified about the C.I.O. handing out the handbills? A. Yes.

Q. And the sound truck and the like?

A. Yes.

Q. At or about that time did you have a conversation with Mr. Daniel P. O'Keefe with respect to a grievance committee? [166] A. Well, I—

Q. Answer yes or no. A. Yes.

Mr. Schullman: Pardon me. Counsel, may we get a time? At or about what time? I don't know what time you are referring to.

(Testimony of Charles Spallino.)

Mr. Nicoson: The time of the C.I.O. campaign.

Mr. Schullman: Is that the one you are relating to eight months ago? You spoke about two campaigns.

Mr. Nicoson: That is the latter one. That is the one he is talking about. That is the one he has identified in the record.

Mr. Collins: This is the one after the war is over you are talking about now?

Mr. Nicoson: That is what he said.

Mr. Collins: I object on behalf of Pioneer Electric Company to any conversation he had with Daniel P. O'Keefe as not binding upon any respondent, copartner or the partnership itself of the Pioneer Electric Company. It does not tend to prove or disprove anything at issue, so far as their case is concerned.

Mr. Schullman: May I have a general objection, so I won't keep bobbing up, to this witness' testimony to any of his alleged conversations with anybody, unless the same relates specifically to Local 792 or any principals or agents. [167] I am making now a blanket objection so I won't have to repeat it to any of the testimony. I will renew it in the form of a motion when the witness is through, to strike out the testimony.

Trial Examiner Kent: Your objection, so far as your clients goes, may go to the line, yes.

Mr. Collins: What is the ruling on my objection?

Trial Examiner Kent: How is that?

(Testimony of Charles Spallino.)

Mr. Collins: What is the ruling on the objection of the respondent Pioneer Electric Company?

Trial Examiner Kent: I will overrule the objection.

Mr. Collins: At this time I wish, for the purpose of expediting this proceeding, to object to the entire line of questioning so far as Pioneer Electric Company is concerned. In other words, I won't renew the objection every time a question is asked.

Trial Examiner Kent: I will make the same ruling as I did in reference to Mr. Schullman's motion. Your objection may go to the line.

Mr. Collins: Very well.

Mr. Nicoson: May I have the last question and answer read?

(The record was read.)

Q. (By Mr. Nicoson): Who is Mr. Daniel P. O'Keefe?

A. Well, he is the president of the O'Keefe & Merritt. [168]

Q. Where did this conversation take place?

A. In his office?

Q. Who was present? A. Just him and I.

Q. What was said and who said it?

A. Well, he congratulated me—

Q. Will you confine your answers to what was said by each of the parties and identify the person making the statement? Don't draw a conclusion. What did Mr. O'Keefe say to you?

Mr. Garrett: One moment, please. That is objected to as irrelevant, incompetent and im-

(Testimony of Charles Spallino.)

material; not binding on any of the objecting unions
Moulders, Carpenters, Stove Mounters; objected to
on the ground there is no proper foundation that
has been laid.

I want to call your Honor's attention, in connection with the objection, to the fact that there is no foundation showing that any one representing the objecting unions was present at this conversation; and to the further point that no one with whom any of the objecting unions made any contracts was present at this conversation.

Mr. Nicoson: I object to the objection as having come too late. The objection he now states is to the previous question, which has been answered. We are now dealing with the second question after the one to which he objects. So I, therefore, object to his objection as coming too late. [169]

Mr. Schullman: To clarify the record, I assume my blanket objection can't be too late because it is constantly in there as granted by the Trial Examiner.

Mr. Nicoson: Granted?

Mr. Schullman: I don't mean the ruling was granted, but the requirement that I repeat my objection to each question has been granted. That is, I do not have to repeat the objection to each question. I assume that was the ruling of the court, insofar as my objection is concerned.

Trial Examiner Kent: So far as your objection is concerned, yes, it went to the entire line.

(Testimony of Charles Spallino.)

Mr. Schullman: I wanted to make sure Mr. Nicoson was not objecting—

Mr. Nicoson: I am not objecting to you, Mr. Schullman.

Trial Examiner Kent: You may answer.

Mr. Garrett: Will your Honor rule on my objections? I would like to know whether you are sustaining them or overruling them. If you are overruling my objections, I would like to know whether it is on their merits or on the point raised by Mr. Nicoson that the objection is made too late.

I call your attention to the fact that we have a witness on the stand who is very hard to understand from the position in which I am sitting in the court room. That no material evidence had been given or no evidence by the witness as to the substance of the conversation at the time my objections went in.

My objections are very important to the unions which I represent, and it is important to know whether they are being ruled upon because your Honor thinks this witness has something to say that is binding on my people, has something to say that is material as to my people, or not.

Trial Examiner Kent: Well, I am not going to limit myself by giving the reasons of my ruling. But I will overrule your objection. The answer may be taken.

Mr. Nicoson: Read the question.

(The question was read.)

Mr. Collins: I object on the ground there is no foundation laid. I think we ought to have a more

(Testimony of Charles Spallino.)

definite date of the conversation, to be in a position to cross-examine and offer rebuttal evidence.

I think it is an unfair situation to leave it as it is. Mr. O'Keefe very likely talks with one or hundreds of his employees every day, and has for years. To single out this conversation, it is going to be practically an impossibility, unless we can arrive at it more certainly.

Mr. Nicoson: I would be perfectly willing if Mr. Collins wants to stipulate with me he had the same conversation with all his employees, I wouldn't care when he would put it.

Mr. Collins: Let's have it more definite. I don't care to make any stipulation about it.

Mr. Nicoson: I think if the witness is permitted to [171] testify it will be quite definite enough.

Mr. Collins: Before he starts testifying, my objection is there is no foundation laid; that is all. It doesn't require any argument between counsel here.

Trial Examiner Kent: You may answer.

The Witness: I can say that was around February of 1945. I just took office as the Five and Over Club President. I was congratulated and asked, you know,—he congratulated me and we got in a conversation, and he—

Mr. Garrett: Just a moment. Before he goes into the conversation now, I would like to have the witness on voir dire, in order to more properly establish the date.

Mr. Nicoson: Before you go into voir dire, I

(Testimony of Charles Spallino.)

would like to have the question put to the witness. I would like to have the last two questions and answers read. I think all of us lawyers have gotten the poor boy confused.

Q. (By Mr. Nicoson): Do you remember having a conversation with Mr. O'Keefe about a grievance committee? A. Yes.

Q. When did you have that conversation?

A. I would say that was around in February.

Q. Of what year? A. 1945.

Q. Where did the conversation take place?

A. In his office. [172]

Q. Who was present? A. Just him and I.

Q. What was said and who said it?

Mr. Garrett: Objected to on the ground it is incompetent, and immaterial; objected to on the ground it is not binding on any of my clients; objected to on the ground it is not purporting to be a conversation with any party or parties with whom my clients have ever had any contractual relations; objected to on the ground the foundation is insufficient.

Mr. Collins: I join in the objection on behalf of respondent, Pioneer Electric and the co-partnership members.

Mr. Nicoson: For people who like to save time this is all very interesting. I have no objection. Go ahead boys, have your fun. I can stay here as long as you can.

Mr. Collins: Just a moment.

Mr. Garrett: I cite counsel's remarks as mis-

(Testimony of Charles Spallino.)
conduct and ask it be so assigned and directed by
the Trial Examiner.

Mr. Collins: I join in that request. This vitally
affects my people, and runs into millions of dollars.
If we are not entitled to have a fair trial and make
legal objections, what are we down here for?

Trial Examiner Kent: You may answer.

Mr. Garrett. May I have a ruling on my objec-
tion, sir?

Trial Examiner Kent: Yes. That was a ruling.
The ruling is that the objection is overruled. [173]

Q. (By Mr. Nicoson): What was said and who
said it?

Mr. Nicoson: Let's go again, boys.

The Witness: Well, Mr. O'Keefe says—

Mr. Garrett: May I have the same objection,
your Honor, since counsel—

Trial Examiner Kent: Yes.

Mr. Garrett: —for the Board has objected to
my getting a ruling on one occasion because, as he
said, my objection came late.

Trial Examiner Kent: Yes.

Mr. Garrett: I would like to have the same ob-
jections entered to this repetition of his question.

Trial Examiner Kent: The record may so show.

Mr. Nicoson: May I ask the reporter to please
read the witness the question?

(The question was read.)

The Witness: Well, he congratulated me, and
he says, "I know you have done well before—you

(Testimony of Charles Spallino.)

have done a swell job and you will do a job as good as you ever did."

He said, "At this time get a very good active committee, grievance committee that won't be afraid to straighten out things." Well, if they can't take care of it in the plant through their foremen, to be sure that I get all the complaints myself—the last resort—he said, "I will see they are taken care of." That is his conversation. [174]

Q. (By Mr. Nicoson): Did you make any reply?

A. Well, I says, sure, that I would try to pick a committee in each department, appoint him. But I would like to have the membership appoint them themselves, so I didn't want to have all of it on my own, to be responsible for picking this committee.

Q. Did anything further take place at that time?

A. No.

Q. Did you do anything as a result of that conversation?

Mr. Garrett: One moment, please. I move to strike the entire conversation as incompetent, irrelevant and immaterial.

Mr. Collins: I join in the motion.

Trial Examiner Kent: What is the purpose of this particular line?

Mr. Nicoson: I am trying to show that stemming right from the president of the O'Keefe and Merritt Corporation was a design to avoid contact with all labor organizations, and through this witness and through this employee set up a grievance pro-

(Testimony of Charles Spallino.)

cedure or committee which disregarded either the A.F.L. or the C.I.O.

I submit, your Honor, that such activity has been repeatedly held, not only by the Board, but, I think, every court in the land, that that is not within the realm of the employer's rights and constitutes unfair labor practices.

Certainly it is unfair labor practice when the employer [175] attempts by any means to undercut the C.I.O. or the A.F.L., especially at a time when the A.F.L., or rather the C.I.O., has just won an election.

Mr. Garrett: If your Honor please, may I be heard for a moment? I should like to call your Honor's attention to one point, namely, this witness places and has placed twice this conversation as being in time in the month of February, 1945.

Trial Examiner Kent: Yes, that is the reason I asked the question.

Mr. Collins: May it please the court,—

Trial Examiner Kent: In any event, though, I think it is admissible as background testimony.

Mr. Nicoson: I would not be content to so limit it, your Honor.

Mr. Collins: Mr. Trial Examiner, I should like to point out to Mr. Nicoson I believe he is being led into an error here. That he will probably develop from this witness this man was the president of the Five and Over Club, and the Five and Over Club has had a grievance machinery since 1935.

It is natural for this man to confer with anybody

(Testimony of Charles Spallino.)

about grievances; that is part of his job as president.

Mr. Nicoson: I thank counsel for his kind remarks. At the moment I don't think I am being misled.

Trial Examiner Kent: You may proceed. [176]

Mr. Nicoson: Will you read the question?

(The question was read.)

The Witness: Yes.

Q. (By Mr. Nicoson): What did you do?

A. I went in the plant and started from department to department and asked the fellows who they would like to have as their grievance committee in that department. I asked the members, and I had them picked according to that.

Q. Directing your attention to on or about October 1, 1945, did you and Mr. Levaseos have a conversation with Mr. Cecil Collins?

A. Yes, we did.

Mr. Garrett: One moment. May that answer go out for the purpose of an objection, your Honor?

Trial Examiner Kent: Yes.

Mr. Garrett: May I have the question re-read?

Trial Examiner Kent: Read the question.

(The question was read.)

Mr. Garrett: I object to that question as leading.

Mr. Collins: I join in the objection and move the answer be stricken.

Trial Examiner Kent: I think it is purely a foundation question. I will instruct the witness not

(Testimony of Charles Spallino.)

to answer other than to answer yes or no. I think it is purely a foundation question.

Mr. Garrett: I should like to point out, however, in [177] framing the question—

Trial Examiner Kent: I would state if the witness or any witness were in the habit of answering questions of that type and going into a long-winded explanation, I think the objection might be warranted. I don't think this witness is. I think that he will come through with a brief answer.

Mr. Garrett: My objection, I don't like your Honor to misconstrue it, is based upon the thought that in framing the question in that way counsel is himself laying the foundation, that is, of relieving or attempting to relieve the witness of the obligation of establishing, not only place and persons present, but time. And so that question is leading in that it, of itself, establishes the time as to which the witness is to testify. That should be brought out by the witness.

Trial Examiner Kent: There may be merit there. I will reserve my ruling. I will ask counsel to reframe the question.

Q. (By Mr. Nicoson): Did you and Mr. Levascos at any time have a conversation with Mr. Cecil Collins? A. Yes.

Q. Mr. Cecil W. Collins, attorney for O'Keefe and Merritt? A. Yes.

Q. Counsel that sits opposite me?

A. Yes.

(Testimony of Charles Spallino.)

Q. Where did this conversation take place?

A. In his office.

Q. Who was present?

A. Mr. Levascos and myself and Cecil Collins.

Q. When did it occur?

A. Well, it was around October.

Q. Would you say it was the first, middle, or latter part of October?

A. The early part of October.

Q. Where is Mr. Collins' office located?

A. It is upstairs in the front office.

Q. About what time of day did this occur?

A. I am not so sure. It was early in the morning, somewhere around—before noon.

Q. Was it during working hours?

A. Yes, during working hours.

Q. I believe you testified that three of you, Collins, Levascos and yourself were present?

A. Yes, sir.

Trial Examiner Kent: Has Mr. Levascos' job been identified?

Mr. Nicoson: He said he was an expediter for O'Keefe and Merritt.

Trial Examiner Kent: Oh, yes. I remember now.

Q. (By Mr. Nicoson): What was said during the course of that meeting and who said it? [179]

Mr. Garrett: Objected to as incompetent, irrelevant, and immaterial; not binding upon the Stove Mounters, Moulders, or Carpenters; objected to on the ground no proper foundation has been

(Testimony of Charles Spallino.)

laid; objected to on the ground that it does not purport to be a conversation with any party representing anyone with whom these unions have had contractual relations.

Mr. Collins: I join in the objection, so far as Pioneer Electric is concerned.

Mr. Nicoson: I can only say, if the witness is permitted to answer, the objection of Mr. Garrett will be rendered obviously inappropriate.

Mr. Garrett: If your Honor please, it is my understanding and these objections are not made capriciously, because the purpose of requiring foundation, the purpose of requiring proof that a person be charged in a conversation is obviously to give them an opportunity to cross-examine and rebut. I don't possibly see how any testimony coming from this man could show it could be binding on my clients if there isn't first a foundation showing that some of my clients were there at the conversation, or at least knew about it, or knew it was going to take place.

Trial Examiner Kent: Well, of course, the testimony could be admissible even though it wasn't fundamentally and primarily binding upon your client. He may answer.

Mr. Garrett: Isn't it usual in those circumstances [180] to rule that it is not binding upon the objecting party, who is shown by the foundation not to be bound by the conversation, or in a position to rebut the implications of it? Wouldn't it be therefore suitable also to hold it couldn't be binding

(Testimony of Charles Spallino.)

to either the objecting parties or their contract which is sought to be attacked in this line of testimony. I haven't any objection to the effect of this man's conversation, insofar as it relates to the Pioneer Electric Company.

Mr. Collins: But I do.

Mr. Garrett: That is for them to object to. But I insist that none of these conversations this man has been permitted to testify to should be taken as binding upon any of my clients who are objecting because the conversations aren't had in their presence.

Mr. Collins: My objection on behalf of the Pioneer Electric Company is along the same line of reasoning. How could Pioneer possibly refute this testimony. They had no representatives there. They are under no duty to come in under—

Mr. Tyre: Does Mr. Collins now represent he was not attorney for the Pioneer Electric at that time, or agent?

Mr. Collins: If you are referring to October 1, 1945,—

Trial Examiner Kent: I was wondering if, from this testimony, you have another position.

Mr. Collins: What do you mean? [181]

Trial Examiner Kent: With the O'Keefe and Merritt or the Pioneer, other than its counsel.

Mr. Collins: Nothing.

Trial Examiner Kent: I noticed the placing of an office in the personnel department.

Mr. Collins: I have been with O'Keefe and Mer-

(Testimony of Charles Spallino.)

ritt for approximately 19 years. I have had a lot of different jobs around there. Ever since I have been practicing law I haven't been anything but the lawyer, that I recall. I represent a number of clients besides O'Keefe and Merritt. Occasionally I might be retained by the Pioneer Electric Company for such as this. [182]

Trial Examiner Kent: I thought possibly you might be an executive officer with O'Keefe and Merritt.

Mr. Collins: I am certain I wasn't specifically commissioned on October 1, 1945, on behalf of the Pioneer Electric Company concerning any C.I.O. activities or A. F. of L. activities, or anything of that nature.

Trial Examiner Kent: You may answer. I will overrule the objection.

Q. (By Mr. Nicoson): Do you remember the question?

A. I think it is the conversation that took place in Mr. Collins' office between Levascos and myself. Well, prior to that, before we went to the office—can I get there or do I start—

Q. Tell me what happened in the office.

A. Yes. In the office we asked Collins what he knew about the shop going union.

He said, "Yes." He says, "We are going to have to go union. Naturally, A.F.L. is what we want."

Q. Who said that? A. Collins.

Mr. Garrett: What did he say? I couldn't hear that.

(Testimony of Charles Spallino.)

The Witness: What did Collins say?

Mr. Garrett: May I have the answer read up to that point?

Trial Examiner Kent: Yes. [183]

(The answer was read by the reporter.)

Q. (By Mr. Nicoson): Was there anything further said at that time? If so, who said it?

A. He also said the C.I.O. is a radical organization and we couldn't do business with them, and the thing for us to do, Johnny and I, is to get a good start. He is already in touch with Roberts of the A.F.L., he had things going our way. That—well, he had it fixed. We could get a certificate or whatever you call it. What do you call that, now? A charter, from the A.F.L. It was all figured out with Roberts. We was going to meet Roberts at a later date.

In the meantime, Johnny and I was supposed to go in the plant and sign up 25, 50—

Mr. Collins: Just a moment. I object to the conclusions being drawn from this witness. I want him to relate the testimony, what I said and what he said; what the conversations were.

Trial Examiner Kent: Yes. Tell what was said, not what you think somebody meant.

The Witness: Did I use that word "think"?

Mr. Nicoson: I don't think so.

Trial Examiner Kent: "We were supposed—"'

Mr. Nicoson: As far as this witness' testimony occurring, at least, the record will indicate, I am quite sure, he is attempting to repeat what was

(Testimony of Charles Spallino.)

said at that time, and has [184] identified the speaker.

Trial Examiner Kent: I recollect his saying, "We were supposed——"

Read his answer. Maybe I am mistaken.

(The answer was read by the reporter.)

Trial Examiner Kent: Yes.

The Witness: That is what Johnny and I was supposed to do. That was our job to do.

Q. (By Mr. Nicoson): Is that what he said? Is that what Mr. Collins said at that time?

A. "You can go in the plant——"

Q. Answer me. Is that what he said or were you telling your reactions and conclusions from the meeting? I don't want your conclusions. I want what was said, and by whom.

A. Well, Collins says we were on the unfair list with AF.L. for many years, which we had been on the unfair list. And we had to get off that list. So he already had talked to Roberts, and Roberts was going to meet us at a later date.

Q. Is that what he said?

A. That is what Collins said.

Q. Go ahead.

A. And then—well, shall I repeat that now about the C.I.O.?

Trial Examiner Kent: Not if you have already said it. [185]

The Witness: I already said it. So he advised that Johnny and I would go into the plant and sign

(Testimony of Charles Spallino.)

up 50 members for the A.F.L. In the manner he wanted the 50 is to get 25—

Mr. Collins: Just a moment, Mr. Spallino. I again ask the Trial Examiner to caution this witness to state what was said. Not what he was advised or what he thought, but what was said.

Trial Examiner Kent: Yes. Confine yourself—

Q. (By Mr. Nicoson): What did he say?

A. Collins said, "You get 25 Five and Over members, that is, the latest members, the new ones. And 25 non-members from the plant. Pick the weak ones you can lead, that you and Johnny—appoint yourself at the head and it will be O.K. Just get 50 members."

Mr. Schullman: Pardon me.

Q. (By Mr. Nicoson): Who is Johnny?

A. Johnny Levascos.

Mr. Schullman: May I ask the reporter to read the last part? Was it 25 members and 25 non-members?

The Witness: Of the Five and Over—

Mr. Nicoson: Let's have the question and answer read, or that portion of it read.

Mr. Schullman: I got the answer in the meantime.

Mr. Nicoson: Your request is withdrawn now, Mr. Schullman? [186]

Mr. Schullman: Yes. Thank you.

Q. (By Mr. Nicoson): Was anything further said during that time?

(Testimony of Charles Spallino.)

A. "Well, will they be satisfied with 25 each"?

Q. Who said that?

A. I said. He says, "Well,—"

Mr. Garrett: I draw your attention to the fact that is the first time this witness has identified the speaker speaking any of the statements.

Mr. Nicoson: Maybe that is the first chance he had. How do you know?

The Witness: I didn't want to get mixed up in it, because I was president—

Mr. Nicoson: Never mind. Don't you worry. I am having enough trouble with it.

Is there a question pending before the witness?

The Reporter: No.

Q. (By Mr. Nicoson): You mentioned a Mr. Roberts. Did Mr. Collins identify Mr. Roberts to you?

Mr. Garrett: That is objected to as leading certainly.

Q. (By Mr. Nicoson): What did Mr. Collins say about Mr. Roberts, if anything?

A. That we would meet him very shortly—we would get—he would get in touch with us, with Johnny and I.

Q. Did anything further transpire at that time?

A. No.

Q. Nothing further was said that you recall?

A. We went down to our business—

Q. Wait a minute. Let's take it step by step. Was anything further said at that time?

Mr. Garrett: Objected to as already asked and

(Testimony of Charles Spallino.)

answered. He already testified there was nothing further said.

Mr. Nicoson: May I have the last two questions and answers read?

(The record was read.)

Mr. Nicoson: I submit the question was not answered.

Mr. Garrett: He was asked if anything transpired, anything further. He said, "no."

Mr. Nicoson: I asked if anything was said and he didn't say that.

Q. (By Mr. Nicoson): I now ask you if anything further was said at that time.

Mr. Garrett: Objected to as already asked and answered.

Trial Examiner Kent: He may answer.

The Witness: Where was I?

(The question was read.)

The Witness: Well, there wasn't anything else said, but we went on downstairs.

Q. (By Mr. Nicoson): All right.

A. That I can recall, anyway. [188]

Q. Did you thereafter see Mr. Roberts?

A. Yes.

Q. How long after that meeting did you see Mr. Roberts?

A. I would say within two or three days.

Q. Where did you see him?

A. In the front office at the telephone.

Q. Will you tell us how you came to see him at that time?

A. Yes, we were called—Johnny came by and

(Testimony of Charles Spallino.)

picked me up on the way going up to the front office.

Q. Is that Johnny Levascos?

A. Johnny Levascos.

Q. You and Johnny, as I understand it, went to the front office. A. Yes.

Q. And there you found Mr. Roberts?

A. Mr. Roberts.

Q. Is that correct? A. Yes.

Q. Did you have a conversation with Mr. Roberts at that time? A. Yes, we did.

Q. Was anyone else present besides the three of you, Levascos, yourself and Mr. Roberts?

A. No, there was just us three.

Q. And what did you talk about?

A. Well, we talked about—we had already signed up a few [189] to the A.F.L. and we—well, Johnny asked about the scale, something about the wage scale and different parts of the contract that the A.F.L. had. And then Mr. Roberts and Johnny and I walked across the street where Mr. Roberts had his car. There is when Mr. Roberts handed us some of these application blanks to sign up A.F.L. members.

Mr. Nicoson: Please mark this for identification.

(The document referred to was marked as Board's Exhibit No. 7, for identification.)

Q. (By Mr. Nicoson): I hand you an instrument which, for the purpose of identification has

(Testimony of Charles Spallino.)

been marked Board's Exhibit 7. I ask you to examine it and state, if you know, what it is.

A. That is a membership application that was handed—well, to me personally.

Q. Membership in regard to what?

A. This is an International Stove Mounters.

Q. Have you ever seen that instrument before?

A. Yes.

Q. Where did you get it?

A. From Mr. Roberts.

Q. You received just the one, or more?

A. Oh, I received about a hundred, I would say.

Q. Would you describe them as to their fastenings, if any?

A. They are in a pad with a cardboard on the back. [190]

Mr. Nicoson: I offer this in evidence.

Mr. Schullman: You don't have copies; do you?

Mr. Nicoson: Yes, I have plenty of these.

Mr. Schullman: At this time we object to the introduction of this in evidence. The reason is we are, of course, specifically—our blanket exception goes to the testimony. We are objection to the offering in evidence of Board's Exhibit 7 for the reason that clearly on the face of it, insofar as it attempts to bind our clients in this hearing—I presume the ruling is consistent with the other rulings insofar as my clients are concerned; the ruling thereon is reserved.

(Testimony of Charles Spallino.)

Clearly, on the face, it doesn't refer to any of the Painters, Painters Union. I am not thereby indicating, incidentally, there is anything wrong with the circulation of this application by the Stove Mounters.

Trial Examiner Kent: It may be admitted.

(Thereupon, the document heretofore marked as Board's Exhibit No. 7, for identification, was received in evidence.) [191]

BOARD'S EXHIBIT No. 7

MEMBERSHIP APPLICATION

Stove Mounters International Union of
North America

Affiliated A. F. of L., M. T. D. U. L. T. D.

I hereby accept membership in the Stove Mounters' International Union of North America, and of my own free will, hereby authorize the Stove Mounters' International Union of North America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rate of pay, wages, hours of employment or other conditions of employment.

Local No..... Date..... 19.....

Shop..... Department.....

Name

Address

First week's dues (check one) 40c [] 25c [].

(Initiation fee and one week's dues must accompany this application.)

(Over)

(Testimony of Charles Spallino.)

Member's Name

Witnessed By

Date..... 19.....

Member's Beneficiary

Member's Age.....

[Endorsed]: Filed March 13, 1946.

Mr. Collins: I object to the introduction of this in evidence upon the ground neither Mr. Spallino or Mr. Roberts or Mr. Levascos were at that time working for Pioneer Electric or partners; not binding upon the Pioneer.

Trial Examiner Kent: I will confirm my prior ruling. It may be received.

Q. (By Mr. Nicoson): I believe you testified that Mr. Roberts gave you about a hundred of these. A. Yes, sir.

Q. At that time? A. Yes.

Q. Did you have any further conversation with Mr. Roberts?

A. Well, at that time when he handed us these applications he was going on a trip to Frisco.

Q. Is that what he said?

A. That is what he said.

Q. Remember, you have to say what the man said, not what you thought he said.

A. That is what he said.

Q. O.K. Go ahead.

A. He would be back within three days, three or four days, and for us to have at least 50 of them signed up for him so that he could start for this charter.

(Testimony of Charles Spallino.)

Mr. Garrett: May I have that last sentence read, please?

(The answer was read.)

Trial Examiner Kent: We will take a recess for about five minutes.

(A short recess was taken.)

Trial Examiner Kent: You may proceed.

Mr. Schullman: At this time, before any further questions, may I move we have an early adjournment just for this one day, [192] based upon the fact we do have a multiplicity of matters we expected to take care of today, even though we didn't have too much hope of a continuance, we thought there might be an early adjournment. If we adjourn approximately at 4:30 we may be able to take advantage of that time. I understand from opposing counsel there is no objection to that.

Mr. Collins: Not so far as I am concerned.

Mr. Nicoson: No objection.

Mr. Garrett: No objection.

Mr. Schullman: May I at this time associate with me, in behalf of Local 792, Mr. Smith, who may alternate with me on this matter.

Trial Examiner Kent: The record may so show. What is your first name, Mr. Smith?

Mr. Smith: David S. Smith.

Trial Examiner Kent: Well, in view of counsel's statement, we will adjourn then at 4:30.

Q. (By Mr. Nicoson): I believe, Mr. Spallino, you had testified just prior to the recess that Mr. Roberts had given you approximately a hundred of

(Testimony of Charles Spallino.)

those cards or slips which were marked Board's Exhibit 7. That was your testimony; wasn't it?

A. Yes. [193]

Q. What did you do with those cards and slips, if anything?

A. Well, I met with John Levascos and went right to work on the membership.

Q. What do you mean you went right to work on the membership?

A. Well, we went right in the plant and signed up who we could.

Q. Describe what you did.

A. Well, I at that time—I don't know whether it is right to bring it out in that way.

Q. Just describe what you did.

A. Well, I was—oh yes, I was signing up the turkeys for Thanksgiving, and I was doing both jobs of looking up my members of the Five and Over, and signing up for the A. F. of L.

Q. What did you do about signing up for the A. F. of L., as you put it?

A. Well, I approached a man and asked him, told him that we had to join the union, and we had to join the A. F. of L., that is the Company wanted the A. F. of L., but at election time they could vote the way they wanted. That is the way I brought it up to them, and they signed—well I signed about thirty-eight, about thirty-eight or forty, before we met Mr. Roberts again.

(Testimony of Charles Spallino.)

Q. Did your activities take you into any particular portion [194] of the plant?

A. Well, all throughout the plant.

Q. Did you in the course of these activities encounter any of the foremen? A. Yes.

Q. Did you have any conversation with any of the foremen about what you were doing?

A. Well, I did with one that was I working for.

Q. Who was that?

A. That was Frank Vacquero.

Q. What did you and Frank talk about?

A. Well, I told him that I was given this job to sign up members for the A. F. of L., and I was signing up for those turkeys, and it would take most of my time away from my machine.

Q. What did he have to say about that if anything?

A. Well, he said that was all right as long as it was all right by everybody else.

Q. About how much time did you devote every day to this particular activity?

A. Oh, from two to three hours each day.

Q. And how long all told were you engaged in the signing up of people?

A. A little better than a month.

Q. Let's go back just a little bit. The conversation [195] at the time you and Mr. Levascos saw Mr. Collins in his office; how long were you in Mr. Collins' office at that time?

A. At which time may I ask?

Q. At the time you and Levascos had the con-

(Testimony of Charles Spallino.)

versation in Mr. Collins' office with Mr. Collins which you testified about. A. How long?

Q. Yes.

A. Oh, I would say from a half hour to forty-five minutes.

Q. And this conversation that you had with Mr. Roberts, was that during working hours or off hours? A. It was, yes.

Q. It was what?

A. During working hours.

Q. How long did that conversation take place?

A. From thirty-five to forty-five minutes.

Q. Now, the thirty to forty-five minutes with Mr. Collins and the thirty to forty-five minutes with Mr. Roberts, was that deducted from your pay? A. No.

Q. The time which you have testified that you spent going around getting signatures as being between one and two hours a day for a period of about a month, was any deduction made for that time out of our pay? [196]

A. No.

Mr. Tyre: I think he said two or three hours, didn't he?

Mr. Nicoson: Well, whatever it was that you spent; if I misquoted you the record will show what you said.

Q. (By Mr. Nicoson): In other words, is it or is it not your testimony that no deduction was made from your pay for any of those activities which you have related about the signing up of the cards and

(Testimony of Charles Spallino.)

visiting Roberts and meeting with Mr. Collins, is that correct? A. That is right.

Q. And did you again see Mr. Roberts?

A. Yes.

Q. When did you next see him?

A. It was the following week, around Wednesday I would say of the following week from the time that he had left for Frisco.

Q. Where did you see him?

A. This time it was at the employees' entrance.

Q. And how did you come to meet him there?

A. Well, the guard said that there was a fellow out there looking for me, and Johnny Levascos was notified the same way and we both went out.

Q. You went out there and whom did you find?

A. Mr. Roberts. [197]

Q. Did you have a conversation with him at that time? A. Yes, we walked—

Q. Wait just a minute. Was there anyone there besides Levascos, Roberts and yourself?

A. That is in the conversation?

Q. Yes. A. No.

Q. What time of the day did the conversation take place?

Mr. Collins: Just a moment Mr. Spallino. I wish at this time to renew my objection to this entire line of testimony, in behalf of the Pioneer Electric Company, on the ground it is not binding upon them.

Trial Examiner Kent: I judge the objection goes to the weight of the testimony rather than any-

(Testimony of Charles Spallino.)

thing else. You may go into it on cross-examination. It may be the custom out there for the guard to call people away from work. I don't know.

Mr. Collins: I am just interposing these objections periodically. I assume, Mr. Examiner, that you have noticed that I made a general objection to anything that does not pertain to the Pioneer Electric Company. There are two objections besides I want to make. As far as this testimony is concerned, I am objecting on the ground it is not binding upon the Pioneer, they were not operating the factory at that time. At this time they had a small part of it where [198] they were making generators. At this time they were not making gas ranges, as the evidence will later show.

Trial Examiner Kent: The record will remain. You may proceed.

Mr. Nicoson: Will you read the record please?

(The question was read by the reporter.)

The Witness: Am I to answer that?

Trial Examiner Kent: Yes, you may answer that.

Q. (By Mr. Nicoson): Yes.

A. All I would say is that it was in the afternoon.

Q. Was it during working hours or off working hours?

A. It was during working hours.

Q. What was the conversation and who made the statements?

A. Well, the conversation was that we had—

Q. Who said it?

(Testimony of Charles Spallino.)

A. Mr. Roberts, how many members we had and I told him that I had about thirty-eight already signed up, that I would have more later, and well, he started reading out some contracts and scales that he was almost finished with, for the cappers and saddlers and so forth at the other stove factories.

Mr. Collins: I move this testimony be stricken upon the ground that it is not binding on either the Pioneer or the O'Keefe and Merritt Company. Mr. Spallino is not an authorized agent of either company, and certainly Mr. Roberts is not.

Trial Examiner Kent: Read that answer, Mr. Reporter.

Mr. Collins: There is no responsible official of the Pioneer or of the O'Keefe and Merritt Company present at this conversation. [199]

(The answer was read by the reporter.)

Trial Examiner Kent: The record may remain.

Q. (By Mr. Nicoson): What further was said and who made the statement?

A. Well, Mr. Roberts said that he would be back within a couple of days, and he would be after the rest of the membership, and he would work on that charter as fast as he could.

Q. Did you give him any of the signed slips?

A. Not at that time.

Q. Did you later meet with Mr. Roberts?

A. Yes.

Q. When did you next meet with Mr. Roberts?

A. I am sure it was within a couple of days.

Q. Where did you meet with him?

(Testimony of Charles Spallino.)

A. This time we met him in front, in the front office.

Q. In front of what?

A. In the front office, by the telephone operators.

Q. Of O'Keefe and Merritt?

A. O'Keefe and Merritt.

Q. Who was present?

A. Johnny Levascos and myself.

Q. And Mr. Roberts? A. And Mr. Roberts.

Q. Did you have a conversation?

A. Yes, we—

Q. What time of the day did it take place? [200]

A. I would say that was in the afternoon, too.

Q. Was it during working hours or off working hours? A. During working hours.

Q. What was the conversation and who made the statement?

A. Well, Mr. Roberts says that we needed some more. Well, he had this 38, and if I could get him at least 16 more right away that he would go out and start this charter and he would have it within a couple of, or two or three days, he would have the charter for us.

Q. As a result of that statement did you do anything?

A. Yes. I went into the Refrigeration Department with these applications and I presented them to a fellow in there whose name is Frank Doyle.

Mr. Garrett: What is that name, please?

The Witness: Frank Doyle and William T. Bennett. I told them that I needed these 16 signatures

(Testimony of Charles Spallino.)

right away and that Mr. Roberts was waiting for them and we would get this charter going right away.

Q. (By Mr. Nicoson): Who is Mr. Doyle?

A. He is the assistant clerk at the service department.

Q. Who is Mr .Bennett?

A. He is, as far as I know, he is the foreman.

Q. What happened after that?

A. Well, they brought me back the 16 applications and I returned them. [201]

Q. Who brought them back to you?

A. Frank Doyle.

Q. How did he get them?

A. Well, he went into the department there.

Mr. Garrett: Objected to as calling for hearsay.

Mr. Nicoson: What is that?

Mr. Garrett: Objected to as calling for hearsay.
The question was how did he get them.

Trial Examiner Kent: Yes, I think you better lay a foundation.

Q. (By Mr. Nicoson): How did he get the applications?

Mr. Garrett: Objected to as calling for hearsay.

Mr. Nicoson: Do you know how he got the applications?

Trial Examiner Kent: If you know.

The Witness: Yes, he went to the—

Mr. Garrett: If your Honor please, that is not proper testimony—

Mr. Nicoson: Withdraw the question.

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): Do you know how he got the application slips?

A. I gave them to him.

Q. Answer yes or no, do you know how he got them? A. Yes.

Q. How did he get them?

A. I gave them to him. [202]

Q. Do you know what he did with them?

Mr. Garrett: Objected to as no proper foundation laid.

Q. (By Mr. Nicoson): Do you know what he did with them?

A. Yes, I was waiting for him.

Mr. Garrett: Objected to as calling for hearsay, obviously.

Trial Examiner Kent: Not necessarily. I think you better lay a better foundation for the question.

Q. (By Mr. Nicoson): Did you see what he did with them? A. Yes.

Q. What did you see?

A. He went to the men in the service department and had them sign up.

Mr. Garrett: Who went to the men?

Q. (By Mr. Nicoson): Yes. Who went to the men? A. Frank Doyle.

Q. Was that in the presence of Mr. Bennett?

A. Yes.

Q. And do you know then thereafter what Mr. Doyle did with those slips?

A. He returned them to me.

(Testimony of Charles Spallino.)

Q. I believe you used the terms service and refrigeration. Are they one and the same?

A. Yes.

Q. How many slips did you say were returned to you by Mr. Doyle, if you did? [203]

A. I would say 16, 15, or 16.

Q. Were they all signed? A. Yes.

Q. Did you do anything with the slips?

A. I did.

Q. What did you do with them?

A. I handed them to Mr. Roberts.

Q. Was he there at the time?

A. He was waiting in front.

Q. Was he with you in the service department or the refrigerator department, as you fellows used to call it? A. He was not.

Q. After you received the 15 or 16 signed slips, describe what you did with them?

A. I handed them to Mr. Roberts.

Q. Where was Mr. Roberts?

A. He was waiting in the front office, that is, the telephone operators' office.

Q. Was anyone with him?

A. Johnny Levascos was there waiting.

Q. Did Mr. Levascos go with you into the service or refrigeration department?

A. He did not.

Q. What further transpired at that time?

A. I don't remember correctly if we went upstairs at that [204] time. Soon after that we went upstairs. There is a little room upstairs that Johnny

(Testimony of Charles Spallino.)

uses a whole lot, there is a telephone in there, and I am pretty sure that is the time that I handed him these. The full amount I think was about 54 or 55 applications, and they were all signed by me on the back of the slip.

Q. What do you mean, they were signed by you on the back of the slip?

A. Where it says "witnessed by."

Q. Were there any other signatures on the slips?

A. On the front part, yes, sir, there was the signature of the applicant.

Q. And you signed as a witness, is that right?

A. I signed as a witness.

Q. During the time that you were talking to Mr. Roberts or you were in the service department with these slips while they were being signed, did you see any foreman around or other officers of the O'Keefe and Merritt Company?

A. Well, I passed by the office there and there is Cole's office which he is the head man in the service department. They all saw me there.

Q. When the three of you, Mr. Roberts, Levascos and yourself went to Mr. Levascos' office or wherever you choose to term it, did you see any foreman or other officers of the O'Keefe and Merritt Company while you were going there? [205]

Mr. Collins: Just a moment. I object to the assumption of a fact which is not in evidence. There is no evidence to show that Mr. Levascos has an office. He is an expeditor. His office would be one of the aisles up and down the factory.

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): Did you or did you not, Mr. Spallino, testify that Mr. Levascos had a room in which here was a telephone and a desk or table?

A. That isn't really an office. It is sort of a torture room, you might call it.

Q. Never mind what you might call it. Let's find out just what it is. It is a room with a desk and a telephone? A. That is right. [206]

Q. That is the place you went to with Mr. Roberts and Mr. Levascos? A. That is right?

Q. In going to that place did you see any of the foremen or any of the other officers of O'Keefe & Merritt?

A. It is unavoidable to run into—

Q. Answer me yes or no.

Trial Examiner Kent: Did you?

The Witness: Not that I can recall passing, my foreman, at that particular time.

Q. (By Mr. Nicoson): Did you see Mr. Daniel P. O'Keefe, for example?

Mr. Collins: I object to this as entirely incompetent, irrelevant and immaterial; upon the further ground it is leading and suggestive. It would be impossible for this man to walk through the factory without seeing foremen and superintendents around the three or five, I guess ten acres there. They can walk around and see people wherever they go. That doesn't mean there is anything suspicious or strange about his seeing anyone.

I object to the line. It doesn't tend to prove or disprove any of the issues in this case.

(Testimony of Charles Spallino.)

Mr. Nicoson: Would counsel also state it was with equal facilities the foremen and other representatives of management could see Mr. Roberts and Spallino and Levascos while [207] they were doing these little chores?

Mr. Collins: I made a legal objection. I will submit to the ruling of the court. I don't intend to get into any altercation with counsel on either side.

(The question was read.)

Mr. Schullman: Your Honor, I was going to say it is obviously an improper question. "Did you see President Truman?" for example, or John Smith, for example. I think it is not only a leading type of question—some leading questions are permissible—

Mr. Collins: It is the type of leading question that can't be cured.

Trial Examiner Kent: I will sustain the objection.

Mr. Collins: It is the type of leading question that can't be cured by the sustaining of the objection, if the Trial Examiner please.

Mr. Schullman: It is the kind of a question that counsel is usually admonished not to ask. As stated, it doesn't cure the question.

Mr. Nicoson: The witness testified he didn't see any foremen. Now I am trying to find out if he saw anyone else in the higher management. Certainly, I have a right to direct my question to that. I first asked him if he saw any foremen or others of the higher management. Those were not [208] my exact

(Testimony of Charles Spallino.)

words. That is the purport of it. His answer to that was he did not see any foremen. I want to find out if he saw any other higher management than the foremen. I certainly have a right to inquire into that.

Trial Examiner Kent: I think, as to that question, then if the question is asked in good faith to refresh a witness' recollection, that it is proper, after he has exhausted his recollection.

Mr. Collins: For the purpose of the record, I now wish to cite the statement of counsel for the Board as misconduct. He has now, by the colloquy, thoroughly coached the witness as to what to testify to from now on.

Mr. Nicoson: The remedy for that is always in the hands of counsel for the other side. He can always have the witness excused any time he thinks I am going to coach him.

Trial Examiner Kent: In view of our understanding to adjourn at 4:30, I think we will adjourn at this time.

(Whereupon, at 4:30 o'clock p.m. Wednesday, March 13, 1946, an adjournment was taken until Thursday, March 14, 1946, at 10:00 o'clock a.m.) [209]

Thursday, March 14, 1946
10:30 o'Clock A.M.

Trial Examiner Kent: You might proceed.

Mr. Nicoson: At this time, your Honor, I would like to propose a stipulation.

It is hereby stipulated by and between the parties that the United Steelworkers of America, Stove Division, Local 1981, C.I.O.; Stove Mounters International Union of North America, Local 125, affiliated with the American Federation of Labor; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, affiliated with the American Federation of Labor; International Moulders & Foundry Workers Union of North America, Local 376, affiliated with American Federation of Labor; District Lodge 96, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators & Paperhangers of America, Local 792, affiliated with American Federation of Labor; Los Angeles County District Council of Carpenters; United Brotherhood of Carpenters & Joiners of America, affiliated with the American Federation of Labor; and Refrigerator Fitters United Association, Local 508, affiliated with American Federation of Labor, parties to the contract, are labor organizations within the meaning of the National Labor Relations Act.

May I now amend the proposed stipulation to make it read International Moulders & Foundry

Workers Union of North America, Local 374, instead of 376, as I read it a while ago? [214]

Mr. Garrett: So stipulated.

Mr. Tyre: So stipulated.

Mr. Schullman: So stipulated.

Mr. Collins: So stipulated.

Trial Examiner Kent: The record may so show.

Mr. Nicoson: Mr. Spallino.

Mr. Tyre: Before we proceed with Mr. Spallino, I have a motion to offer to the Examiner at this time. There was some discussion yesterday, I believe, on the record by Mr. Collins as to whether or not the Steelworkers have a right to participate in this proceeding to the extent that they would be permitted to enter into stipulations or their signature would be required for stipulations. The Examiner, I do not think, made a direct ruling on it. In my own mind I have no question but what we are a party to this proceeding by the fact that we are the charging union. However, so that there may be no question about it, I wish at this time to file a motion for intervention and I hand the Trial Examiner the original and three copies of this in accordance with the rules, and I hand a copy of the motion to each of the counsel present.

Mr. Schullman: If I may comment, the only objection I have to the motion is this: I think it is a superfluity. I agree with counsel that being the moving parties, they would be the intervenors. They are the moving party, and no intervention is necessary, except for technical reasons. I think [215] it

sort of puts a peculiar situation having them be both the moving party and the intervenor.

Trial Examiner Kent: I think Mr. Schullman's answer is correct. I don't think there is any necessity for you to formally intervene, but you may participate and take part in the proceedings generally.

Mr. Tyre: I would like to state this, Mr. Examiner, the rules and regulations do not expressly make the charging union a party.

Trial Examiner Kent: No, but the practice of the Board has been, however, to permit the representatives or attorneys for the charging party to participate in the proceeding as a party. Therefore, I do not think there is any necessity for formal motion, and I will rule that you may participate.

Mr. Schullman: I think we can stipulate that they may participate. I don't know that that requires intervention.

Mr. Tyre: And our signature will be required or at least our consent will be required to any stipulation during the proceedings?

Mr. Collins: Mr. Examiner——

Trial Examiner Kent: Well, I don't know that I would go that far. I think that the Board, I think the counsel for the Board has the power to enter into certain stipulations with any of the parties.

Mr. Collins: Mr. Trial Examiner,—— [216]

Trial Examiner Kent: Without getting the consent of all the others. The Board has a primary interest here; as I see this type of proceedings, it is very much like an ex rel. proceeding where the attorney general appears on behalf of some member

of the public. In that type of proceeding whoever is conducting the case for the state or the government in that type of proceeding I think has the authority to permit the complainant to participate or otherwise as he sees fit, and I suppose our practice would be substantially the same as that. And it is the general policy and practice in the Board's hearings to permit the charging party to participate and examine witnesses and participate generally. It might be a danger to permit any of the parties to insist upon joining in every stipulation, because I do think that counsel for the Board might have discretion to enter into certain stipulations with any party involved in the case, irrespective of whether or not some of the other parties might object. They, of course, would be free to state their objections, and the Board, assuming that the Trial Examiner for the sake of argument admitted that sort of a stipulation, the objections would be in the record. The Board might very well see fit to set aside the ruling of the Trial Examiner and not accept the stipulation.

Mr. Tyre: All I would seek, in any event, is that in so far as the hearing portion of this proceeding is concerned, [217] is that I be given the same rights as any of the other parties.

Trial Examiner Kent: Yes, I think that is our general practice. I don't think you need to be apprehensive about that.

Mr. Collins: Mr. Trial Examiner, at this time, so I won't have to object to it from time to time during the proceedings, I wish to enter a general

objection to the attorney for the Steelworkers participating in this proceeding in any manner other than to consult and advise with Board's attorney. We are not down here being persecuted and this is a legal proceeding. The Board is in charge of the investigation of this charge. To allow the charging party to be a party to this proceeding would be like allowing someone from the Los Angeles Times or some labor papers to come down here and cross-examine my witnesses and enter into stipulations.

Trial Examiner Kent: Well, I think this: I think that there is an obvious identity of interest between the Board's case and the charging organization's case. In cases where the charging party's attorney does participate, cross-examination should be on new matter and not on matter already covered by the Board's examination or cross-examination. That is, on the grounds of fairness in saving time.

Mr. Schullman: When I said, your Honor, I personally have no objection for my clients, I understand the other counsel do, and they have valid reasons.

I may say, historically, in this type of proceeding, I think we were the first in this kind of proceeding in the country, when it first started. We were not permitted—we were the charging party. We were only permitted to enter here as *amici curiae*.

At that time it was developed that a complaint case, following upon a charge issued by the person, has, as your Honor indicated, assuming it was an ordinary state forum, it would be sort of a quasi-governmental proceeding whereby the charging

party is the informant. In that case we couldn't proceed. We had to be *amici curiae*. As far as we are personally concerned, we have no objection.

Mr. Nicoson: Mr. Examiner, purely in the interest of the technical niceties of the thing, I disagree with Mr. Schullman, first, upon the statement that the C.I.O. is the moving party. The C.I.O. is not the moving party. It is the charging party. The moving party in this proceeding is the Government of the United States, the National Labor Relations Board.

Secondly, I disagree with your Honor that this is in the nature of an *ex rel.* proceeding. It certainly is not. It is a proceeding authorized by the Congress of the United States empowering the National Labor Relations Board and the National Labor Relations Board only to prosecute unfair labor practices committed under the Act. That not only has been stated by the Congress of the United States, but the Fifth Circuit Court of Appeals definitely put to rest any question as to interest of private parties in a proceeding of this kind in the Agwilines case. That doctrine was subsequently affirmed with equal force by the Supreme Court of the United States in the Amalgamated case.

Since that time all courts have clearly accepted as the doctrine that it is the United States Government that brings these actions, and not on the relation of anybody. But in the interest of the United States and public interest. Not in the interest of any private person.

I think your Honor has correctly stated that the practice of the Board, so long as I can remember, having been a member of the staff for about nine years, that the charging party has been permitted without question to appear by counsel and to examine witnesses, to that I do not object. [220]

But, as I say, in the interest of technical niceties I think the record should at least show I do not agree that anybody besides the National Labor Relations Board is the moving party and that the proceedings are not on the relation of anybody.

Mr. Schullman: Since we are being technical, I want to clarify the record for the niceties. Since there is disagreement with you, when I mentioned the word "moving party" I did not use them in the fashion that the government or the district attorney or the prosecutor would. I meant they were the party that made the charge and moved in that they succeeded in getting the Board to proceed. So there is no disagreement on that.

I agree with the court, despite those two cases where the Board indicated that the government proceed, didn't mean it was in the nature of ex rel.

Trial Examiner: It is nearer to that type of proceeding.

Mr. Schullman: It has been so compared in cases. In other words, it is true no other—it is technically presumed it is only the governmental and public interest. It is nearer to that type of proceeding than any other proceeding.

Mr. Collins: Mr. Trial Examiner, Section 28 of the Rules and Regulations of the National Labor

Relations Act [221] effected July 12, 1944, on page 9 states, among other things, that "The hearing for the purpose of taking evidence upon a complaint shall be conducted by a Trial Examiner."

Section 24 delineates the duties of the Trial Examiner. It seems counsel for the Board and the Trial Examiner shall have the power to call, examine and cross-examine witnesses, and to introduce into the record documentary or other evidence. It doesn't say anything about any unions or anybody else complaining about it.

The next section says "Rights of parties. Any party shall have the right to appear at such hearing in person, by counsel, or otherwise, to call, examine and cross-examine witnesses."

I submit that you might tolerate somebody coming in here, and you have that right, if the respondents do not object to it.

I emphatically object to having counsel for any union, except those affected by this proceeding, to wit, the A.F.L., in this proceeding, having the right to cross-examine my witnesses.

Trial Examiner Kent: That practice is always bad, and I think properly the attorney for the charging party may, in view of the fact the same rule applies to the various A.F.L. counsel, there is a quasi-identity of interests between the Board's attorney—and if you regard the C.I.O.'s attorney as a representative of the C.I.O.—and its interest in the proceeding.

I don't think that the C.I.O. attorney should examine on the same matters the Board counsel does.

Neither do I think that the numerous counsel for the various A.F.L. unions should examine or cross-examine on the same matter covered by other counsel. That is the general rule to expedite the hearing and save time.

Mr. Schullman: Except when it particularly applies to the particular party involved.

Trial Examiner Kent: Yes. Our practice has always been to permit the attorney for the charging party to participate at least to that extent. Even in 8(3) cases the dischargees are regarded as quasi-parties.

Mr. Garrett: I desire to state, and I desire to have the record show that I, on behalf of the labor organizations represented here by me, object to any participation by United Steelworkers of America, Stove Division, Local 1981, C.I.O., in these proceedings.

I object to and oppose their motion to intervene, which has just been handed to me, and object to their participation in these proceedings, either under that motion or otherwise in either examining, producing or cross-examining witnesses, making objections or entering into stipulations.

I desire to state, with respect to what was said by Mr. [223] Nicoson, that the labor organizations represented by me deny that this Board has any authority to impair the obligations of the contract with the labor organizations I represent are a party to.

I would like to state that I had a conversation with the reporter prior to the inception of this

hearing concerning the ordering of a transcript by the A.F.L. unions. I informed the reporter I had written to San Francisco yesterday regarding the question of authority on my part so to do. I have just now been handed a memorandum from the outer office here stating that the person to whom I addressed that communication in San Francisco is here in the city and will be here for two hours.

It is obvious that my letter did not reach that person in San Francisco because of his presence here today. If I might have a recess for ten minutes it would be greatly appreciated.

Trial Examiner Kent: Yes. You may have the recess. But previous to that I had better rule on your motion.

Mr. Garrett: Yes.

Trial Examiner Kent: Having ruled on Mr. Tyre's motion for leave to intervene, holding that I deemed it unnecessary, why, that, in effect, is an overruling of your present motion.

Mr. Garrett: I assume that I may be granted a continuing objection. [224]

Trial Examiner Kent: How is that?

Mr. Garrett: I assume also I may be granted a continuing objection to any participation by the C.I.O.

Trial Examiner Kent: Yes.

Mr. Garrett: So I won't have to object.

Trial Examiner Kent: You have an automatic exception to any adverse ruling that the Trial Examiner makes.

Mr. Garrett: Yes. That isn't what I wanted.

I wanted it understood that I had a continuing objection along the lines of what I have just stated, so that I won't have to get up and restate it every time.

Trial Examiner Kent: No. I think the record is clear on that. I have ruled he can participate to that limited extent. He can't examine and cross-examine on the same matters gone into by the Board. That is merely to expedite time. I think it is a rule generally followed where the parties have some similarity of interest in the outcome of a proceeding.

We will take a 10-minute recess.

(Short recess taken.) [225]

Trial Examiner Kent: We might proceed. Having denied your motion for intervention, Mr. Tyre, do you wish those two copies of the written motion to go in as rejected exhibits?

Mr. Tyre: I think I filed the original and three copies, yes, as rejected exhibits.

Trial Examiner Kent: They are received as rejected exhibits, then.

(The document heretofore marked as C.I.O.'s Exhibit No. 1, for identification, was received in evidence as rejected exhibit.)

Mr. Nicoson: I would like to call Mr. Spallino to the stand.

Mr. Collins: Mr. Trial Examiner, before we take this witness, before we start on this witness, I have been reading the transcript, and I note on page 103 in a line down about the center of the page it says, "I expect to show they had at one time as many

as 108 employees." The statement was 180. I wonder if the record might be corrected.

Trial Examiner Kent: Yes.

Mr. Collins: I also note on page—

Mr. Tyre: What page was that last one?

Mr. Nicoson: 103.

Mr. Collins: I also note on page 127 that I offered to stipulate that so far as O'Keefe and Merritt Company is concerned, that we would sign a contract with the Steelworkers [226] upon the same terms and conditions as the one they have with the American Federation of Labor, with the exception that there are so many A. F. of L. members working for the O'Keefe and Merritt Company that we would expect to grant them maintenance of membership with the customary escape clause. I also added another condition to that, to wit, that they take O'Keefe and Merritt off the unfair list. I assumed at that time, due to my conversations with the organizers for the C.I.O. that they could do that. In subsequent conversations they state that they cannot get O'Keefe and Merritt off the unfair list, or at least they do not wish to make the statement, so I wish to remove that as one of the conditions that I would stipulate. I want the same statement that I referred to, the only exception being that we would want maintenance of membership with the customary escape clause. I would like to have the record show that. I wonder if the stipulation might be more acceptable now, in the interest of shortening and stopping this lengthy proceeding.

Mr. Tyre: I wonder if I could examine, Mr. Collins, how many people would be covered by this contract with O'Keefe and Merritt at this time.

Mr. Collins: To the best of my information and belief, there are approximately 50 employees of the O'Keefe and Merritt Company.

Mr. Tyre: 50? [227]

Mr. Collins: 50.

Mr. Nicoson: To make a long story short, I couldn't agree to stipulate to that. I don't know about the other people.

Trial Examiner Kent: What is that, Mr. Tyre?

Mr. Tyre: That was Mr. Nicoson.

Mr. Nicoson: I said I couldn't agree to stipulate to that.

Mr. Collins: That would remove one of the charges.

Mr. Nicoson: I don't think that removes anything.

Mr. Collins: To sit down here and sign a contract in the court here today, it would remove that charge. We are bargaining in good faith, if we signed a contract; it is more than bargaining.

Mr. Nicoson: The record will show whether or not it is good faith. I am content to let the record stand.

Mr. Collins: I understand then the C.I.O., appearing in court by counsel, refuses this offer I now make?

Mr. Tyre: I don't think it is necessary to re-

fuse, reject or modify. The Board has indicated it does not accept; that is the end of that.

Mr. Collins: Very well.

Mr. Nicoson: Now, does your Honor think it would be safe for me to ask the witness a question?

Trial Examiner Kent: Yes, you may proceed.

CHARLES SPALLINO,

called as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination
(Continued)

By Mr. Nicoson:

Q. You are the same Mr. Charles Spallino that testified in this proceeding yesterday; are you not?

A. Yes, I am.

Q. At the end of yesterday's session you will recollect—if I am wrong, correct me—you had just related an experience you had had with Mr. John Roberts of the Stove Mounters, in which you stated that you had given him some cards, had signed up some more in the service department, and that you and Mr. Levascos with Mr. Roberts went up to the room regularly occupied by Mr. Levascos.

A. It is not generally occupied by Mr. Levascos. It is sort of a room away from everybody. It is a room that—

Q. It is the room that Mr. Levascos habitually used? A. He has a key to the place.

Q. After that meeting with Roberts and after

(Testimony of Charles Spallino.)

being in the room, the three of you, did you thereafter have a conversation with Mr. Daniel P. O'Keefe? A. The same day?

Q. Well, did you have a conversation with him? I will fix the time, if you had one. [229]

A. No.

Q. Now, do you understand the question?

A. Not truly.

Q. All right. You remember this occurrence I have told you about with Roberts and Levascos and the cards and so forth? A. Yes.

Q. After that, at any time did you have a conversation with Mr. Daniel P. O'Keefe?

A. That was later.

Q. All right. I take it then you did have a conversation, a conversation with Mr. O'Keefe?

A. Yes.

Q. When did that conversation take place?

A. Well, I had several conversations with him.

Q. I am referring now only to the first one that took place after this meeting with Mr. Roberts and Mr. Levascos.

A. If my memory is right, we had a conversation with Mr. O'Keefe when I was called by Mr. Collins, our lawyer, and he had a pamphlet—literature that the Five and Over president was supposed to put out.

Mr. Garrett: I object to that; no proper foundation.

Mr. Nicoson: I agree with you. I am trying to establish contact with the witness.

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): After this meeting with Roberts, which I have just refreshed your recollection on, did you have a [230] conversation with Mr. O'Keefe with respect to the application slips?

A. Oh, yes.

Q. When did that conversation take place?

A. That was on a Saturday.

Q. How long after you met Mr. Roberts?

A. I would say a week afterwards, I met Mr. Roberts.

Q. Where did the conversation take place?

A. In the plant.

Q. Whereabouts in the plant?

A. Near the shipping department.

Q. Who was present at the time?

A. Well, I was with a committee at that time. I was loading a truck with beer and material for a dance I was giving on that date.

Q. Who was present in the committee?

A. Well, there was Louie Ortega. No, I beg your pardon. Louie wasn't on that. It was Johnny Miles.

Q. Miles?

A. One of the truck drivers. And Tom Martin. And—let me think hard who the others were. Angel Defoe, I think it is.

Q. Devoe? A. Defoe. Charlie Gatone.

Mr. Garrett: How do you spell that? [231]

The Witness: G-a-t-o-n-e, or something like that.

Trial Examiner Kent: What does he do?

The Witness: Charlie Gatone?

Trial Examiner Kent: Yes.

(Testimony of Charles Spallino.)

The Witness: At the present I really don't know—Oh, he is in the plating department.

Q. (By Mr. Nicoson): What was he doing at that time?

A. At that time—well, he probably was a welder; I wouldn't be sure, but he was a welder.

Q. Was anyone else present?

A. I can't recall the others. I think there was one more, I can't remember who he was.

Q. What does Johnny Miles do?

A. At present he is a truck driver.

Q. What was he doing then?

A. Well, he was in the generator—I am not very certain whether he was in the generator department.

Q. At that time what did Mr. Martin do?

A. Martin? He was in the same department.

Q. At that time what did Mr. Defoe do?

A. I am sure he was in that—or he was helping welders. I think he was helping welders.

Q. About what time of day did this occur?

A. In the morning.

Q. During working hours or off working hours?

A. We were off. It was on Saturday.

Q. Saturday? A. Yes.

Q. Will you now recite what occurred in the conversation, giving us the names of those who made the statements?

Mr. Schullman: If the court please, before the answer is given I want to—since it is another day—again make my blanket objection to testimony of

(Testimony of Charles Spallino.)

this witness, and particularly of this particular question, since very clearly it couldn't possibly bind my client, Local 792. And for the further reason it doesn't tend to prove or disprove any of the issues in the matter as affecting my clients. For the same reason it is incompetent, irrelevant and immaterial, as far as my clients are concerned.

Again, so I don't have to repeat my objection in the same form as yesterday, I will ask that a blanket objection to the testimony of this witness be renewed at the end of each question, without stating it into the record.

Trial Examiner Kent: Yes, your objection may go generally to the general line. Of course, the testimony is admissible to meet other issues.

Mr. Collins: I will join in this objection on behalf of the Pioneer Electric Company.

Mr. Garrett: My objections also, of course, go to all conversations related at which representatives of the unions [233] represented here by me were not present, and I therefore object on the ground that the question calls for hearsay, that no proper foundation has been laid, that the conversation is not binding upon the unions I represent, and that it is not a conversation participated in by anyone with whom my unions have or had contractual relations, and I ask, so that I won't have to continue to state that objection, that that objection be a continuing one to all conversations in which representatives of these objecting unions are not shown by the foundation to have been present.

(Testimony of Charles Spallino.)

Trial Examiner Kent: Well, in regard to the foundation being laid, Mr. O'Keefe, as I remember was previously identified.

Mr. Nicoson: As the president of the company, that is correct.

Trial Examiner Kent: Yes. That was by the——

Mr. Garrett: That is not a corporation, as I understand it.

Trial Examiner Kent: The answer may be taken. I will overrule the objection.

Mr. Garrett: And I have a continuing objection?

Trial Examiner Kent: Yes, for this type and line of questioning you have.

Mr. Collins: I have the same ruling, do I not, Mr. Examiner, so far as the Pioneer Electric is concerned? [234]

Trial Examiner Kent: That is probable, as far as the Pioneer is concerned at this time. It does go to meet some of the issues raised in the complaint, so it is generally admissible.

The Witness: Answer?

Trial Examiner Kent: Yes.

The Witness: Well, Mr. O'Keefe, I happened to run into him in the aisle near the shipping department and he stopped me and he says, "You got an early start——"

Mr. Garrett: One moment. There is no proper foundation laid. There is no showing as to whether or not these other parties who have been named were present at this conversation or not.

(Testimony of Charles Spallino.)

Mr. Nicoson: The witness testified they were present.

Trial Examiner Kent: Yes, he testified that Miles and Defoe and Gatone were with him at that time.

Mr. Garrett: Now, he is heading along and he says I was going in the shipping department and I happened to meet Mr. O'Keefe in the aisle, so we have a different situation, and no direct evidence as to whether or not other persons were present besides himself and Mr. O'Keefe.

Trial Examiner Kent: Of course, in one of the preliminary questions, he said this committee was there when they had this conversation. I gather that it is sort of a fair assumption that was a continuing situation, since the conversation was [235] in the presence of this committee, I think it is a fair assumption that it was a continuing recitation.

Mr. Garrett: Wouldn't it be proper to take this witness then on voir dire to find out whether or not at the time he met Mr. O'Keefe in the aisle the other persons he mentioned were present?

Trial Examiner Kent: Well, technically, I suppose if you insist it may have merit. I will let Mr. Nicoson ask that question.

Q. (By Mr. Nicoson): Were these other people there at the time, Charles?

A. They were loading a truck.

Q. Were they there?

A. They were within seeing. They were not within hearing.

(Testimony of Charles Spallino.)

Q. They were not within hearing distance?

Mr. Garrett: I think I stand vindicated now, your Honor.

Q. (By Mr. Nicoson): Then at the time you were about to relate, who else was present besides you and Mr. O'Keefe at that particular spot?

A. As we talked?

Q. Yes.

A. Well, they were near. I wouldn't say they were present to hear.

Q. Would you say there was anyone present besides yourself and Mr. O'Keefe who would hear it? [236] A. No.

Q. What was said then at that time by Mr. O'Keefe and what was said by you?

A. Well, Mr. O'Keefe says that, "Charlie, I hear there has been a lot of pressure put on some of these fellows that you are signing up for the A. F. of L."

And I said, "No, Mr. O'Keefe, that ain't so." I says, "I used a little politics on the way I talked to the fellows, that they didn't have to sign, that when election time came they could vote the way they wanted to," and I told him that I had 85 signatures already given to Mr. Roberts, representative of the A. F. of L. at that time, that I thought that I did my part, that I was going to have my hands out from then on, and he says, "Well, you done a good job and that should be enough. Let them take care of it from then on." And that was the conversation.

(Testimony of Charles Spallino.)

Q. Had you prior to that time had any conversation with Mr. O'Keefe with respect to the application slips?

Mr. Schullman: Objected to for the reasons that the question originally stated, the question indicated that this was his first conversation with Mr. O'Keefe, therefore, it is assuming facts that are not in evidence.

Trial Examiner Kent: This was the first conversation following.

Mr. Nicoson: He said it was the first. I want to find [237] out if this really is right.

Mr. Schullman: Now, if he wants to impeach his own witness, he ought to so state, but I think he has several times clarified for the record that this was the first conversation with Mr. O'Keefe. I think it would be highly improper to try to impeach his own witness.

Mr. Nicoson: It is not a matter of impeachment. It is a matter of rehabilitating a witness. The poor witness sits here through the long objections involved, we have the arguments and statements going on for about 30 minutes, and the poor boy is asked to answer the question that was put to him 30 minutes ago.

Mr. Schullman: I think, your Honor, that is an unfair statement, because as far as I am concerned I have not interposed objections except when necessary, and to be very clear about it I carefully listened to the interrogation and I think the record is very clear that he asked several times now when

(Testimony of Charles Spallino.)

was the first time you spoke to him, and the answer was given.

Mr. Nicoson: No.

Mr. Schullman: Well, let's read the record, then, counsel.

Mr. Nicoson: If counsel will bear with me, the question said when was the first time he had a conversation with Mr. O'Keefe after the time I established that he had the [238] conversation with Mr. Roberts. I am now asking if prior to that time he ever had any conversation with Mr. O'Keefe, and I submit that is perfectly proper and it is not an impeachment of the witness.

Mr. Schullman: If your Honor please, I think we really ought to take a few minutes and I would like to have the reporter read back the interrogation concerning the opening of this session.

Mr. Nicoson: Perfectly glad to have it.

Mr. Schullman: I think you will find, unless I am in error, and I may be, but I think you will find that it was very clearly said this was the first conversation with Mr. O'Keefe.

Trial Examiner Kent: After he delivered the application cards.

Mr. Schullman: No, your Honor.

Mr. Nicoson: All right, let's have the record read and get the facts of this situation.

Trial Examiner Kent: We will appeal to the record, then.

Mr. Nicoson: Begin at the beginning of the examination of this witness.

(Testimony of Charles Spallino.)

Mr. Schullman: Maybe I will save some time. If the intention is to go back before Mr. Roberts' time, I mean, let's find out and perhaps I will withdraw my objection.

Mr. Nicoson: Well, that is the intention. If you want [239] to withdraw your objection, it is all right with me. The record is here.

Mr. Schullman: Let's have it then.

Mr. Nicoson: Since you challenged it, I suppose——

Mr. Schullman: Let's hear it.

(The record was read.)

Mr. Nicoson: Does that satisfy you?

Mr. Schullman: Counsel has drawn first blood.

Mr. Nicoson: Now, do you have the question I put?

(The pending question was read as follows:

“Q. Had you prior to that time had any conversation with Mr. O'Keefe with respect to the application slips?”)

A. That is before the——

Q. (By Mr. Nicoson): Before the one you just related. A. Yes.

Q. When did that conversation occur?

A. Well, that was, I would say, about a month earlier, or somewhere in that neighborhood, that Johnny Levascos and I myself went into Mr. O'Keefe's office to find out——

Q. Wait just a minute. Was there anyone else besides you and Levascos and Mr. O'Keefe present?

(Testimony of Charles Spallino.)

A. At that time there was Johnny Levascos and Mr. O'Keefe and myself.

Q. What time of day was it? [240]

A. In the morning, I would say.

Trial Examiner Kent: Try and talk a little louder.

Q. (By Mr. Nicoson): What at that time was said by Mr. O'Keefe and what was said by Mr. Levascos and what was said by you?

A. Well, Johnny started the conversation, to find out if it was true that we had to get into the union and how did he think about it, and Mr. O'Keefe said that, "Well, we are trying to branch out our business up north, and we have been on the unfair list of the A. F. of L. and we should—well, he says, "I can't come right out of it but," he says, "Collins knows everything, and you work right from Collins," he says, "don't even bother Joe Spallino, but see Collins," that Collins would be the fellow to tell us what to do. [241]

Q. You will correct me if I misquote your previous testimony. I believe you have already testified that you had several meetings with Mr. Roberts. Was that the way you put it?

A. Mr. Roberts?

Q. Yes. A. Yes.

Q. At any of those meetings was a person by the name of McMurray present?

A. McMurray, yes.

Q. Do you know who Mr. McMurray is?

A. Well, I have seen him here in the court room.

(Testimony of Charles Spallino.)

Q. Do you know what his business or occupation was at that time?

A. Mr. McMurray, he is a machinist, I think he represents the Machinists.

Q. Where did you first see Mr. McMurray?

A. I don't remember whether it was in Collins' office, possibly in Collins' office.

Q. Do you know a Mr. Bud Daley?

Mr. Garrett: Can I have that last name, please?

Mr. Nicoson (Spelling): B-u-d D-a-l-e-y.

Q. (By Mr. Nicoson): Who is Bud Daley?

A. He is a machinist.

Q. Where is he employed or where was he employed? A. At O'Keefe & Merritt. [242]

Q. And did you at any time see Mr. McMurray on an occasion when Mr. Daley was present?

A. No.

Mr. Nicoson: Will you mark this, please?

(Thereupon, the document referred to was marked as Board's Exhibit No. 8, for identification.)

Q. (By Mr. Nicoson): I hand you an instrument which, for the purpose of identification, has been marked Board's Exhibit 8, and ask you to examine it and state, if you know, what it is.

A. This is Machinists' application.

Q. Did you ever have that card in your possession? A. I have.

Q. Where did you get it?

A. From McMurray.

Q. Will you describe the circumstances sur-

(Testimony of Charles Spallino.)

rounding the occasion when you got it from Mr. McMurray?

A. Well, I am not sure I got it in Collins' office, but at one time he—McMurray came into the employees' entrance and he handed me about, oh, I would say, 35, 40 of these cards (indicating).

Mr. Schullman: I wonder, counsel, if you could sort of approximate that time.

Mr. Nicoson: I will try to, counsel. Thank you.

Q. (By Mr. Nicoson): When did that occur?

A. Well, it was after a meeting that we had at Collins' office. There were several union representatives in his office at that time.

Q. Can you fix that meeting, the time of that meeting?

A. That was, I would say, within two—between two and three weeks of the time that Roberts handed me those cards. I would say within, between two and three weeks.

Q. Was there anyone present besides Mr. McMurray and yourself at the time you received those cards? A. There was Johnnie Levascos.

Q. Just the three of you? A. Yes.

Q. Did you say where this occurred?

A. In front of the employees' entrance.

Q. Did you at that time have any conversation with Mr. McMurray or Mr. Levascos about these cards? A. Well, I—

Mr. Garrett: Objected to; no proper foundation laid.

(Testimony of Charles Spallino.)

Mr. Nicoson: I submit that is one of the foundation question.

Trial Examiner Kent: Yes, it is a preliminary question. I can't see any harm—

Mr. Garrett: At the beginning he asked him to give the conversation.

Mr. Nicoson: I asked him if he had a conversation. [244]

Mr. Garrett: I also want to point out it isn't clear in this witness' testimony—maybe I misunderstood him because he was holding that card in his mouth—as to whether this was two or three weeks before or two or three weeks after.

Trial Examiner Kent: Those gentlemen up at the end of the table have to hear you, too.

The Witness: Yes.

Q. (By Mr. Nicoson): Will you enlighten counsel as to whether it was before or after?

A. What was that question?

Mr. Nicoson: Read the question.

(The question was read.)

The Witness: I said it was in between two and three weeks prior to the time that I had contact with Roberts.

Q. (By Mr. Nicoson): Prior, did you say?

A. Yes, before I handed these 50 applications to Roberts.

Q. Did you at that time have a conversation with Mr. McMurray about the cards?

A. When he handed me the cards?

Q. Yes.

(Testimony of Charles Spallino.)

A. Well, when he handed me the cards—

Q. Did you? Just say yes or no.

A. No, there wasn't much of a conversation.

Q. Did you talk? Did anybody say anything?

A. Well, that we would take care of the cards.

Q. Somebody said something; is that your testimony? A. Yes.

Q. What was said and who said it?

A. Well, then I took the cards—

Q. What was said?

A. Well, I couldn't take care of the Machinists' cards.

Q. Did anybody say anything to you about that, taking care of machinists' cards?

A. That I didn't have time; that is what I said.

Q. Did anybody say anything to you about it?

A. To get these cards—

Q. Do you understand what I am trying to drive at, Mr. Spallino? Did Mr. McMurray say anything at all to you at that time? Answer yes or no.

A. He wanted to know how strong—

Q. Answer yes or no. A. Yes.

Q. Anything at all? A. Yes.

Q. Anything under the sun? A. Yes.

Q. He said something to you? A. Yes.

Q. What did he say? [246]

A. He wanted to know how many—

Q. Not what he wanted to know. What did he say?

A. How many fellows were in the machine shop,

(Testimony of Charles Spallino.)

how many members or workers in the machine shop.

Q. Did you make a reply to that?

A. I told him there was about 14 or 15 I could recall at this time.

Q. Did Mr. McMurray say anything further?

A. No. He says he would like to get the cards to him. That he had one fellow that was already a machinists, paid up member, that he would like to talk to him.

Q. Did he mention him by name?

A. He did, but I don't recall his name.

Q. Was there anything further said at that time by either you, Mr. Levascos or Mr. McMurray?

A. No. We were going to take care of the cards.

Q. Did you take the cards from Mr. McMurray?

A. I did.

Mr. Collins: Mr. Nicoson, may we have the exact date in the record of this conversation with Mr. McMurray?

Mr. Nicoson: He said between two or three weeks after—

Mr. Schullman: Prior.

Q. (By Mr. Nicoson): When did you have this conversation with Mr. McMurray?

A. You want to know the exact time? [247]

Q. As nearly as you can fix it.

A. As near as I can fix it, it was in the three weeks there; things happened awfully fast.

Q. Three weeks of what?

(Testimony of Charles Spallino.)

A. The time I had this conversation with Roberts.

Mr. Collins: What was the date of that?

Mr. Nicoson: I think that has been fixed in the record. That is cross-examination. He can examine on that cross-examination.

I now offer in the record Board's Exhibit 8.

Mr. Schullman: If the court please, on behalf of Local 792, the same line of objections is made as to the other exhibits. We object to the introduction in evidence of Board's Exhibit 8, the authorization of representation of the IAM insofar as it may attempt to be binding or affect my clients 792.

Clearly on its face it doesn't purport to be a card or document of my clients, nor any authorization on behalf of my clients. It is therefore incompetent, irrelevant and immaterial; doesn't tend to prove any issues in the case; and doesn't tend to prove or disprove the allegations—there are no allegations in the complaint affecting my clients. Anyhow, therefore, we object to the introduction of this Exhibit 8.

Trial Examiner Kent: Where did you get that particular [248] card?

Mr. Nicoson: He got it from Mr. McMurray.

Trial Examiner Kent: Does the record show that?

Mr. Nicoson: Purported himself to be a representative of the Machinists.

Mr. Collins: I object on behalf of Pioneer Elec-

(Testimony of Charles Spallino.)

tric Company on the ground there is no proper foundation laid; doesn't tend to prove or disprove anything at issue so far as their case is concerned. It is not binding upon the Pioneer Electric. There is no showing that any representative or officer of the Pioneer Electric was present at any of these conversations.

Trial Examiner Kent: I am a little confused. Where did you get that card?

The Witness: From Mr. McMurray.

Trial Examiner Kent: It may be received.

Mr. Schullman: If the court please, previously in my objections ruling had been reserved on the other seven exhibits, which were of the same general type and description in that none of them—

Trial Examiner Kent: There were certain exhibits that ruling was reserved on pertaining to the representation proceeding. I previously have admitted, I think, the exhibit prior to this, another card.

Mr. Schullman: I objected. The ruling was reserved on [249] that, as far as we are concerned. That is my notation. I am sorry I didn't hear.

Trial Examiner Kent: No, I think I will make a general ruling. This is admissible. It does tend to meet some of the issues. Of course, I think your objection goes to the weight where it concerns your clients.

Mr. Schullman: No. Let me make myself explicitly clear. We are a party to the proceedings. We are a separate party. My clients appear through

(Testimony of Charles Spallino.)

separate counsel. I am not objecting to the admission of this card insofar as some of the issues are concerned. Insofar as they affect my clients it is proper to have a ruling on that part of the case.

Now, by no stretch of the imagination, can an exhibit secured as a result of conversation between individuals, none of whom—I mean that is elementary law—none of whom represent my clients. There is no evidence they had authority for my clients. There hasn't been a mention of any of my clients being involved. You cannot accept evidence in the record that is entirely foreign to one of the parties. I am not speaking about all the parties. They have their own individual objections.

So, for that reason, I had assumed that ruling was reserved until such time as they possibly could show—if they could ever show—I don't see how they can show—this could affect Local 792. [250]

Local 792, as a matter of fact, is not, nor never has been part of the Machinists. So it isn't a question of foundation, your Honor. If somebody brought in a document showing the Chamber of Commerce—giving them a Chamber of Commerce document, how could you bind my clients on conversation had between individuals, none of whom represent or are authorized to represent my clients. You cannot admit it into evidence. It is a miscarriage of law to admit it. It can be remedied.

I, therefore, object very strenuously, and your Honor can make a ruling limitedly to this particu-

(Testimony of Charles Spallino.)

lar case, that this exhibit and the others to which we objected, since there is no evidence—not a shred of it—that can be applicable to my clients, that therefore, insofar as they are concerned, it is not admissible. It isn't a question of foundation.

There is no law, and I would like to see and have some law, which would bind litigants on written documents secured in conversation, when the parties involved do not represent my clients, or the litigants, where the documents do not relate to my clients or the litigants. That is simple, elementary law.

Mr. Nicoson: I submit, your Honor, that if we are able to prove—and I think we will be—that this whole course of conduct, which we are only scratching the surface of at the moment, is unfair labor practices, and that, as a result of [251] those unfair labor practices, the Painters got a contract which we have alleged is illegal, then obviously this whole course of conduct affects the Painters as well as any of the other AFL contracting parties.

I submit it is relevant and material, not only as to the O'Keefe and Merritt, but to all other parties, both respondents and those interested in the contract.

Mr. Schullman: I submit, your Honor, that type of proof, when the record will finally be adduced, is impossible. Both counsel are merely stating—we are not witnesses—what we think will be proven. Until that is proven—that is the reason I hesitated

(Testimony of Charles Spallino.)

when ruling was reserved—until they can prove that, until they can tie my clients to these documents, I submit that the least this court can do is reserve ruling. When it is tied in I will make additional argument at that time, if it can possibly be tied.

Mr. Collins: The practical matter, Mr. Trial Examiner, is, when you admit evidence against people who certainly have no opportunity to be present and controvert this evidence with evidence of their own, you do two things. You either make it impossible for them to defend themselves or you make this proceeding so long you will never get through with it. They will be digging up little bits of scraps of evidence, trying to show no such conversation ever took place. [252] It is an impossible thing.

I submit there should be rulings made as we go along. This is admissible against this party and not against that, and so on. The evidence should be divided so we know what to defend and what we can eliminate from our defense.

Mr. Schullman: Can your Honor make a decision admitting this against my clients on the state of the record presently under any law? How can you tie a litigant—I am sincere in this—how can you have a record tying a litigant, admitting evidence, when admittedly on its face there is no reference to the litigant involved, and the conversation admittedly—no Painters were present, ad-

(Testimony of Charles Spallino.)

mittedly nobody with authority was present to bind anybody. As the state of the record exists—

Mr. Nicoson: I certainly don't agree he admitted no representative of the Painters was present. I think before this is over we will show the Painters are as much involved in this as anyone else.

Mr. Schullman: Counsel knows that isn't so, because, as the record will show, the Painters didn't even participate in the election, insofar as the consent is concerned. We will meet that when the time comes. Anyhow, I will submit that to a ruling. There is no sense in continuing to redundantly argue my point.

Mr. Nicoson: For once I agree with you, counsel. [253]

Mr. Schullman: I think, your Honor, it is a question of discussion between counsel. That don't get the facts. Whether levity statements are necessary here—I am here to get a perfect record.

Trial Examiner Kent: It may be admitted.

(Thereupon, the document heretofore marked Board's Exhibit No. 8, for identification, was received in evidence.)

(Testimony of Charles Spallino.)

BOARD'S EXHIBIT No. 8

[Front of postal card.]

Postage	No
Will Be Paid	Postage Stamp
by	Necessary if
Addressee	Mailed in the
	United
	States

BUSINESS REPLY CARD (First Class Permit No. 16049,
See. 510, P.L.& R., Los Angeles, Calif.)

International Ass'n of Machinists, Lodge 311
Machinists Building
123 W. 18th Street
Los Angeles 15, California

[Back of postal card.]

Authorization for Representation Under the National Labor
Relations Act

[Emblem] I.A. of M. (A.F. of L.)

I, the undersigned, employee of.....(company).....(address).....authorize Lodge No. 311, International Association of Machinists, to represent me in negotiations for better wages and working conditions.

This authorization supersedes any similar authority previously given to any person or organization.

My Signature.....

My Address.....Phone.....

Kind of Work.....Dept.

Date.....Shift: Day [] Swing [] Graveyard []

[Endorsed]: Filed March 14, 1946.

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): After you received those cards from Mr. McMurray, what, if anything, did you do with them?

A. I handed them to John Levascos to take care of them. I told him I had done plenty.

Q. Did you thereafter see these cards again?

A. Yes. They were handed to me, all but one or two, from this—

Q. By whom? A. Bud Daley.

Q. Bud Daley is the one you said was the machinist? A. Yes.

Q. How many cards were returned to you, if you recall?

A. Well, I would say—I don't know whether it was about 15 of them, something like that, that came back to me.

Q. Were they signed or unsigned?

A. Unsigned.

Q. Did Mr. Daley give you any signed cards?

A. No. [254]

Q. Did you thereafter see any of those cards you gave to Mr. Levascos signed? A. No.

Q. By anyone? A. No.

Q. You mentioned something in your testimony a moment ago about meeting in Collins' office. I don't know how you put it. If I am wrong, why, correct me.

A. There were several AFL organizers in the presence.

Q. When did that occur?

(Testimony of Charles Spallino.)

A. It occurred within those three weeks, between the time Roberts received those cards, those membership applications, and during all this conversation we have just—

Mr. Schullman: Counsel, may I get that a little bit clearer? I have a variable date here. I have the fact that his conversation with McMurray was prior to Roberts. Now, is this conversation in Collins' office prior to Roberts?

The Witness: That happened in those three weeks. I wouldn't say prior to it.

Mr. Nicoson: Let me try to fix the time, counsel, and then you can object.

Q. (By Mr. Nicoson): Do you recall?

Mr. Schullman: I am not objecting. Pardon me, counsel. I am not objecting. I am trying to get an accurate approximation. It is not an objection.

Mr. Tyre: Could we read the answer of Mr. Spallino back before the last one? I think that was clear.

Trial Examiner Kent: Yes.

(The record was read.)

Q. (By Mr. Nicoson): Now, directing your testimony to the time you and Mr. Levascos first went to Mr. Collins' office, do you remember that?

A. Yes.

Q. Was it before or after that time?

Mr. Schullman: If your Honor please, at this time I move to strike out the answer.

Mr. Nicoson: There isn't any.

(Testimony of Charles Spallino.)

Mr. Schullman: The previous one. The question was asked when he went to Collins' office, and he identified the approximate time and there were AFL organizers. I move that question and answer be stricken out—the answer, especially. There is no foundation. I thought he was going to follow it up. If there are AFL organizers, I want to know who they are.

Mr. Nicoson: You will find out.

Mr. Schullman: You jumped to another track.

Mr. Nicoson: I am trying to fix the time. If you leave me alone for a couple of minutes I will do it, even to your satisfaction.

Q. (By Mr. Nicoson): Do you remember that first meeting you [256] had with Mr. Collins?

A. The first meeting?

Q. The first meeting you have testified to, where you and Mr. Levascos went to Mr. Collins' office. Do you remember that? A. Yes.

Q. Now, was this meeting that you are testifying about, the AFL organizers, before you first met with Mr. Collins or was it after? A. After.

Q. How long after?

A. Well, I would say in those three weeks.

Q. Well, would you say it was three weeks, one week, two weeks, two days or four days or what?

A. Everything is happening every day there.

Q. As best you can fix it for us.

Trial Examiner Kent: I am a little bit dubious about the record. It is my recollection yesterday he testified to a conversation with Mr. Collins about

(Testimony of Charles Spallino.)

two years ago during a prior CIO campaign. I think now you probably returned to a later—

Mr. Nicoson: If your Honor will permit me to point out to you I have not asked the witness the question about that meeting. He testified at one time there was a meeting between himself, on the one hand, and Mr. Levascos and Mr. Collins; [257] three people.

If your Honor will also recall, from the record, at the meeting four years ago there were four people present. My question clearly indicates it was not the meeting two years ago. It is the one which he understands and which he is now testifying about, and which I am now trying to fix the time by.

Trial Examiner Kent: If the record is clear on that, it will be all right.

Mr. Nicoson: Let me have the last couple of questions and answers.

(The record was read.)

Q. (By Mr. Nicoson): Do you understand the question? A. Yes, I do.

Q. All right. To the best of your recollection, how long after you and Johnny met with Mr. Collins, at that time you testified—

A. The first time, I would say it would be within the three weeks.

Q. Within three weeks is a matter of three weeks? A. Yes.

Q. Now, is it three weeks or is it within three weeks? I don't care. Just tell us.

(Testimony of Charles Spallino.)

A. It would be within those three weeks.

Q. You understand three weeks consists of seven days each, [258] which is a total of 21 days. Now, when you say "within three weeks" it could be any one of those 21 days? A. Yes.

Q. You understand that?

A. Yes, any one of those.

Q. Any one of those 21? A. Yes. [259]

Q. Is it your testimony that you can no closer fix it than within the three weeks' period?

A. Not the date.

Q. I also take it, and you correct me if I am wrong, you were present at that meeting in Mr. Collins' office? A. Yes.

Q. Who else was present besides yourself?

A. Well, there was Johnnie Levascos, Cecil Collins, and McMurray, Mr. Roberts.

Q. Is that the same McMurray you have testified about?

A. Yes. Mr. Roberts of the Stove Mounters and there was a Teamster fellow, I don't recall his name at this time. He was a little short fellow. And there was a representative of the Carpenters, I don't recall his name at this time.

Q. Do you remember when he was called at that time?

A. This carpenter? I don't recall that.

Q. All right, anyone else?

A. I am trying to think of this fellow from the foundry, Lazzerini, I think that he was there, it is pretty hard to remember them all.

(Testimony of Charles Spallino.)

Q. Have you now exhausted your recollection as to names of the parties there?

A. Of more than these names of the ones I have mentioned?

Q. Is that all you can recall?

A. That is all I can recall at this time. [260]

Q. I will ask you to state whether or not a Mr. Blaney was there.

A. That is the Teamster. I recollect now.

Q. I will ask you to state whether or not a Mr. Nick Cordell was present.

Mr. Garrett: Objected to as leading and suggestive.

Mr. Nicoson: It obviously is, and the witness has exhausted his memory and a leading question is permissible.

Trial Examiner Kent: Yes, I think so.

Mr. Garrett: I don't believe that. I have never heard of that rule.

Mr. Nicoson: You should consult Professor Wigmore.

Trial Examiner Kent: The record will remain. Let us proceed.

Mr. Garrett: Are you overruling my objection, Mr. Trial Examiner?

Trial Examiner Kent: Yes.

Mr. Nicoson: Will you read the question, Mr. Reporter?

Mr. Garrett: Wigmore is obsolete here. There are more modern professors than Wigmore.

(Testimony of Charles Spallino.)

Mr. Nicoson: Will you please read the question to the witness?

(Question read.)

Mr. Garrett: I would like to say, your Honor, that I [261] understand your Honor is overruling my objection, and I abide by your Honor's ruling, but I would ask your Honor what would be the purpose of a rule that would permit counsel on direct examination to get all that he could out of a witness by legitimate means and then because he couldn't get any more, start in to leading and putting words and names in the witness' mouth.

Trial Examiner Kent: I think the inquiry is proper. When it clearly appears that the witness' recollection seems to be exhausted, it is proper questioning for counsel to refresh his recollection or attempt to refresh his recollection. That is based on an assumption, of course, that in previous interviews with the witness counsel has probably received that information. I think it is proper practice, and I am going to permit the inquiry.

Mr. Collins: Mr. Trial Examiner, on stipulation of counsel that we were going to close at 12:00 and at 4:30, it is now 12:15, and as much as I have enjoyed this session—

Trial Examiner Kent: Let's see. What is this stipulation of counsel?

Mr. Nicoson: May I go ahead and have an answer to this question?

Trial Examiner Kent: Yes, let's take the answer to the question.

(Testimony of Charles Spallino.)

Mr. Nicoson: Will you read the question to him, Mr. [262] Reporter?

(Question reread.)

Mr. Garrett: Let him identify him for us.

Mr. Nicoson: Wait a minute. Let's find out if he was there.

Mr. Garrett: Note my objection to this question.

Trial Examiner Kent: The answer may be taken.

The Witness: I have a picture in my mind that the fellow that is sitting right there, I had a meeting with him at one place or another, but I can't recall who he is.

Mr. Garrett: You were indicating counsel?

The Witness: I am indicating you. I don't recall where I have seen you before.

Mr. Garrett: Indicating me?

The Witness: Yes, sir. I don't know whether that is your name or not. I have had contacts with so many A. F. of L. people—pardon me, I think I am getting out of line.

Mr. Schullman: May the record show that the witness has identified counsel as Nick Cordell.

Mr. Nicoson: No, I will not. I submit that that is not what the record shows.

Mr. Collins: The record shows that he identifies counsel as having been there.

Mr. Nicoson: As having seen him some place before in a meeting, and not as Nick Cordell. [263]

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): Now, can you state, does your recollection have any value as to whether or not Mr. Nick Cordell was present? Answer yes or no. A. No.

Mr. Garrett: I wish to state, your Honor, that of course counsel can only agree to appeal to the Trial Examiner, who has the ordering of the hearing in his hands, but prior to this morning's hearing I consulted with all counsel and all were in agreement that if it pleases your Honor's convenience it would be a great convenience on the other hand to the attorneys here represented if between 12:00 and 2:00 o'clock the customary recess be taken, as is the rule in our courts of record here in this city.

Trial Examiner Kent: What are the hours observed in the courts here?

Mr. Garrett: 12:00 to 2:00, and that serves the convenience of counsel who have other litigation, in that they can return to their office and keep their office running and not be thrown entirely out of contact, due to a short noon recess. Everyone here wants that.

Trial Examiner Kent: I think that there is some merit in that. I have always felt that way. I practiced law myself in Detroit. I realize that attorneys have to have more than one client in order to live, and that when a number of counsel are engaged in one of my hearings they do have to [264] take some time to see their clients, especially in a city. It has been my experience in small towns counsel are perfectly willing to sit from 9:00 o'clock

(Testimony of Charles Spallino.)

in the morning until 6:00 o'clock at night. I suppose the clients will even come to their homes, maybe, and walk there. But I do think that they are entitled to some courtesy and consideration. How about beginning the morning session at 9:30 and sitting until 12:00 and from 2:00 to 5:00?

Mr. Garrett: If your Honor please, we hoped for something even a little better than that, and my suggestion is this, and all the attorneys here are in agreement. I have consulted each one. We should like if it were possible to commence at 10:00, as we have been doing, which gives us a chance to start our offices in the morning, run through to 12:00 and then possibly run from 2:00 to 4:30, as we did yesterday, which gives us an opportunity to go to our office in the morning, find out whether our stenographers have a new story about why they have not reported for work that day, and get back to our office and do a little work during the noon hour, and then again look in at 5:00 o'clock before the closing of our office, which customarily around here we close our law offices at 5:00. We discussed this in anticipation of the fact that the hearing might be rather more extended than we thought at the beginning, and that by such hourly arrangements, which are agreed to by all the attorneys here, [265] we could preserve our businesses from going to wreck and ruin, as they will if we are forced out of contact with our offices. We are also cognizant of the fact that the two-hour recess at noon will be much more beneficial to us in this hearing than

(Testimony of Charles Spallino.)

it often is when we are in trial in the courts up in the Civic Center, because here we are much closer to our offices and can really get in that two hours.

Trial Examiner Kent: Well, suppose we make it from 10:00 to 12:00 and 2:00 to 4:30.

Mr. Garrett: That was what we hoped for, your Honor.

Mr. Tyre: Your Honor, that was not quite what we agreed to with Mr. Garrett. We did talk about the noon recess from 12:00 to 2:00, with which I am in agreement. I want to point out that we do not get started exactly on time and our recesses are rather lengthy.

Trial Examiner Kent: Well, I think if we are going to shorten the hours we should cut out the recesses unless it means a man is called to the telephone, an emergency recess.

Mr. Tyre: I would prefer, if the court please, that we start at 10:00 and go to 12:00, and recess 12:00 to 2:00, and then come back 2:00 to 5:00. I think we can take care of our offices in the morning and have all the time necessary.

Trial Examiner Kent: I am glad you made that suggestion, which is probably fairer to me, because we are [266] supposed, of course, to sit from 9:30 to 12:30 and 2:00 to 5:00. I realize there is a distinction in the larger cities, especially in the case where a number of attorneys are involved, and so we will agree then on 10:00 to 12:00 and 2:00 to 5:00, and let's try and make it 10:00 and 2:00.

(Whereupon, at 12:25 o'clock a.m., a recess was taken until 2:00 o'clock p.m.) [267]

After Recess

(The hearing was reconvened at 2:20 o'clock p.m.)

Trial Examiner Kent: You may proceed.

Mr. Tyre: Mr. Examiner, it has been called to my attention that a typographical error was made in the number indicated on my motion for intervention on behalf of the Steelworkers. The number as given on the motion is 21-R-3101, which is the number of the R Case in this matter, which was followed by the certification. The number should be 21-C-2689.

I would like at this time to have the motion deemed to be amended in that manner.

Trial Examiner Kent: Yes. I would suggest, there are two copies in the formal exhibits. You might make physical changes on those two copies.

CHARLES SPALLINO,
called as a witness by and on behalf of the National Labor Relations Board, having been previously sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

By Mr. Nicoson:

Q. Mr. Spallino, just prior to the noon recess I believe you had testified concerning a meeting in Mr. Collins' office, at which yourself, Mr. Levascos,

(Testimony of Charles Spallino.)

Mr. Collins and some persons you had designated as being members or representatives of the AFL unions were present. Do you remember that? [268]

A. That is right.

Q. Had I asked you what time the meeting was in the day? A. What time of the day?

Q. Yes. A. I don't remember.

Q. You don't remember whether I asked you or you don't remember—

A. I don't know what you asked me.

Q. What time of day did this occasion occur?

A. It could have been in the morning.

Q. Well, what is your best recollection?

A. At that time I was working in the cafeteria and I was called at different occasions. It could have been around 9:30 in the morning. It could have been at recess, at 2:00 o'clock.

Q. What is your best recollection as to the time of day? A. In the morning.

Q. Will you now state what was said at that meeting and who made the statements?

A. Well, each representative gave—

Q. You are going to have to identify them and tell what was said, Charles.

A. That is kind of hard to do, to say who started first and who was next, because it does get awfully complicated. It has been quite a while. [269]

Q. Do the best you can.

A. Well, we had the fellow from the Teamsters, and he gave us his view of how they operated and how we go about it, and it was all a matter of con-

(Testimony of Charles Spallino.)

versation of union activities in different departments of the locals and of each union.

Q. Did this conversation have anything to do with the employees of O'Keefe and Merritt plant?

A. Well, they asked how many were in different departments, and the conversation was all on union activities, and I can't recall just word for word how it was brought about.

Q. Did Mr. Collins have anything to say?

A. Well, the exact conversation, I wouldn't know.

Q. Well, give us the substance or your best recollection of what it was.

A. Well, Johnny Levascos and I went into the reception room and we were introduced to each individual there, and we sat there and questions was asked back and forth of each department and how the fellows felt towards the union, whether they were CIO or whether they believed in the A. F. of L.

Q. Who asked those questions?

A. Well, each—I could not point a finger at one of the representatives that would have asked me that question, but I know that question was asked to me and I told them that there was quite a few there that felt CIO.

Q. Anything further said? [270]

A. Well, the conversation I can't recall at all. I know we were there for about a half hour or so.

Q. Do you recall now anything there that was said by any of the parties at that time?

(Testimony of Charles Spallino.)

A. I think at that time we did suggest a meeting, we did suggest the meeting and a meeting place, and I made a suggestion for this meeting place.

Q. What kind of a meeting?

A. An A. F. of L. meeting, to get a few of the boys at this meeting where these representatives would talk and could give them a line-up on the A. F. of L.

Q. What was said about that?

A. Well, they asked where would be a good place to hold this meeting.

Q. Did you have any answer to that?

A. Yes.

Q. What did you answer?

A. I had suggested that I knew a place up on Griffin and Main, that I knew the proprietor there, that he would let us have his hall, because he only had his dances there on Saturday and Sunday, and he would have the hall available.

Q. Anything further?

A. So he says that would be a good idea, to go ahead and make contacts with this proprietor.

Q. Who said that? [271]

A. Roberts. I could make that statement, that Roberts said that.

Q. Did anything further transpire at that time?

A. Well, it was left up to me to make the arrangements for the meeting and to have everyone notified at this meeting, for this meeting.

(Testimony of Charles Spallino.)

Q. Was there any discussion as to how you were to notify the employees of the meeting?

A. Well, the A. F. of L. had a leaflet out in front of the employees' entrance. They were notified about this meeting. [272]

Q. Were you to have anything to do with the leaflets? A. Did I have anything?

Q. Were you? A. No.

Q. Was anything else discussed at that time?

A. That was all at that time.

Q. Is that all you now remember?

A. That is all.

Q. I will ask you to state whether or not at that time and place anything was said by any of the persons that you have mentioned as being present about union jurisdiction?

Mr. Garrett: Objected to as leading and suggestive.

Trial Examiner Kent: What was that?

Mr. Nicoson: Read the question please.

(The question was read.)

Mr. Garrett: Now, may the last two questions and answers be read, prior to that one, and then the one that has just been read and my objection?

Trial Examiner Kent: Yes.

(The record was read.)

Trial Examiner Kent: He may answer.

Mr. Garrett: I make the further objection it is an attempt by counsel to impeach his own witness. The witness has already testified he has related everything he knew. Now, counsel is testifying.

(Testimony of Charles Spallino.)

Mr. Tyre: The testimony was he related everything he recalled, not everything he knew. Counsel is trying to find out if there was anything else.

Trial Examiner Kent: He may answer.

Q. (By Mr. Nicoson): Do you understand the question now, Mr. Spallino?

Mr. Schullman: At this time, if the court please, may that objection also be entered in behalf of Local 792 and for the additional reason that not only is it leading and suggestive but it tends to be, and is contrary to the testimony of the witness. The witness at two or three separate occasions has already stated that that was all, that was all, that was all. I have taken down his notes as he made the statements.

I realize the liberality with which these proceedings are visited, so far as trying to get all the testimony. When we reach that point, where there is a definite terminus, I think it is beyond the pale of counsel to lead in that manner.

Trial Examiner Kent: You may answer.

Q. (By Mr. Nicoson): Do you remember the question? A. May I have it again?

Mr. Nicoson: Read the question, please.

(The question was read.)

Mr. Garrett: May that question be answered yes or no? Will the Trial Examiner direct that question be answered yes [274] or no?

Trial Examiner Kent: What is it?

Mr. Garrett: May I ask that the Trial Examiner

(Testimony of Charles Spallino.)

direct that the last question asked by the Board's attorney be answered either yes or no.

Trial Examiner Kent: Well, I won't limit the particular question. I think the question purely is an effort, and a proper effort to impress the witness' recollection. He may answer the question.

The Witness: I don't quite understand that last word there, that hard word, "jurisdiction."

Mr. Nicoson: Will you read the question to the witness, please?

(The question was read.)

The Witness: That word "jurisdiction," what is the meaning of that word? I don't get it clear.

Mr. Nicoson: All right. Strike the question.

Q. (By Mr. Nicoson): I will ask you to state whether anything was said at that time by any of the persons you have enumerated as being present, as to what portions of the plant, if any, any of the labor organizations there were interested in. Do you understand that? A. Oh.

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial; objected to as leading and suggestive. [275]

Trial Examiner Kent: He may answer.

The Witness: Well, at that time Roberts made a statement that—well, all the membership, whether they were Teamsters or whether they were Machinists or whether they were Painters, or whatever they were, up until the election, they were going to all be together until the election. After the election each local representative would divide the dif-

(Testimony of Charles Spallino.)

ferent locals. At that time they were all in one for this election that was coming up. That was in the conversation.

Mr. Schullman: I now move the last answer be stricken, in line with my continuing objection to any testimony given by this witness which attempts to bind Local 792, for the clearly obvious reason that none of the parties present belong to or are a party of, have authority to represent or authorization to represent Local 297. I realize my continuing objection goes to this, but at this time I want it set forth for the additional factor that this testimony is the result of an answer to a clearly invalid type of leading question, to supply a deficiency which obviously existed, and an attempt to so supply that deficiency.

I think it is incumbent on this court to strike it out, because, as previously objected to, the witness had finished his testimony on three different occasions. Now, it appears obvious that within the conception of the Board's counsel that there is an attempt to create a situation which wouldn't [276] exist, because the parties there present did not constitute, were not members of, couldn't represent them any more than they could this court.

Suppose they said this Trial Examiner was bound by it? I think it is time we get specific rulings, your Honor, which are in accord with at least the limited elements and principles of law. I say, as far as my clients are concerned, we realize we are bound by the rulings. We urge definitive rulings

(Testimony of Charles Spallino.)

on such type of questions. We reiterate our objection and our motion to strike.

Trial Examiner Kent: The record may remain.

Mr. Garrett: Now, I want to move to strike, also, if your Honor please, because we feel that in replying to the last question that this witness was permitted, under the guidance of the Trial Examiner, in response to a leading question, to testify about a matter which he did not remember and concerning a term which he did not understand.

Mr. Schullman: May I go a point further, if the court please. I hope this is not taking any further time and extent than I have to to protect the litigant, that if a ruling is made by the Trial Examiner, and I realize it is unintentional, and were it intentional I would be required in my duty representing my client to charge that as the type of intentional misconduct which would prejudice the proceeding to such an extent—I am merely indicating that the [277] courts have held where an appliance is made of attempted material after leading question, a response is made to the leading question and the court permits that, that omission tending to supply when it was not originally given voluntarily on direct examination, was grounds for a complete reversal and have been held to constitute objectionable conduct. I am talking now not about the rules of the NLRB, but I am talking about courts of law, and I will be glad to give you a very extensive brief on that.